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NOTES OF RECENT CASES.

Anantanarayanan, O C J
2nd March, 1966.

Pethaperumal Maistry *v.*
Perumal Maistry.
C R P. No 562 of 1965.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 3 *and Rule* 8 (1) *of the Rules of* 1955—*Application for eviction on the ground of arrears of rent—Payment of arrears directed by order of Court to be made on or before a certain date—Whole of the day fixed for compliance available—Order of eviction on the same date—Not valid—Hearing and disposal of the application by successive officers—Provision in the Rules*

Where a Court fixes a date for the fulfilment of a certain condition the person on whom the obligation is imposed will have the whole of that day for complying with that order

Where the order of the Officer fixed a particular date on and before which the tenant has to deposit the arrears of rent, and though the name of tenant was called at about 5 P M that would not necessarily imply that he could not have still complied with the earlier direction to deposit or pay the arrears on that date An order for eviction on that very date is not sustainable. If the Court had made the order of eviction on the next day, the order will be unassailable

Rule 8 (1) of Rules framed under the Act provides for the hearing and disposal of an application under the Act by the successive officers presiding over the Court.

Ganapathi Padayachi v *Dharmapuram Mutt*, (1965) 2 M.L J 14, referred.

T R Venkatraman, for Petitioner

N Krishnamurthi, for Respondent

V S — *Petition allowed*

Venkatadri. J
1st April, 1966

Netaji Bus & Lorry Service *v*
Gurumurthy
C R P No. 974 of 1963

Limitation Act (IX of 1908), *Article* 31—*Delivery of goods by carrier—Non-delivery—Suit for compensation—When the goods ought to be delivered—Starting point for limitation*

The date of despatch, according to the case of defendant, was 2nd March, 1961. The plaintiff sent a registered letter to the defendant informing non-delivery and in the absence of a satisfactory reply, issued a registered notice on 5th March, 1962, and filed the suit on 10th December, 1962 On the question of limitation

Held, the suit is barred under Article 31 of the Limitation Act Time, would begin to run after a reasonable period has elapsed on the expiry of which the delivery

ought to have been made. Article 31 does not contemplate the period of one year from the date of notice.

T. L. Nagaraja Rao, for Petitioner.

G Jagadeesa Rao, for Respondent.

V.S. —— *Petition allowed.*

Anantanarayanan, O C J
2nd April, 1966.

E. K. Subramaniam *v.* Mrs Sundarammal.
C R P.No 412 of 1966.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 11 (4), 18—*Application for eviction on the ground of wilful default in payment of rent—Order to pay arrears of rent—Non-compliance—Order terminating proceedings and directing tenant to put the landlord in possession—Executable under section* 18

An order under section 11 (4) of the Madras Rent Control Act terminating further proceedings and directing the tenant to put the landlord in possession of the building, made on the non-compliance of the interim order directing the tenant to pay the arrears of rent pending an application for eviction on the ground of wilful default in the payment of rent, is executable under section 18 of the Act.

V Bhavani Sankar for *R. Venkatrama Sarma*, for Petitioner

B. T Seshadri, for Respondent.

V.S —— *Petition dismissed.*

Kailasam, J
11*th April*, 1966.

M/s. Pilmen Agents (P) Ltd. *v.* Collector of Madras
W P Nos 621 of 1965 & 513 of1966

Customs Act (LII of 1962), *sections* 12, 28 *and* 147—*Non-levy of duty—Recovery from the agent of importer—Procedure prescribed under section* 28 *to be followed—If the remedy is time-barred, liability also extinguished—Order adjusting time-barred levy against the monies of agent—Order illegal—Liable to be quashed by writ, notwithstanding existence of an alternative remedy.*

Under section 28 of the Customs Act in the case of non-levy of customs duty, the Collector must within six months from the relevant date, the date on which an order for the clearance of the goods was made, serve a notice on the person chargeable with the duty calling upon him to show cause and after hearing the representation, proceed to pass the order and recover the amount If no such notice is issued within six months, the debt becomes time-barred and cannot be recovered The Act is a Code which defines the procedure and will have to be followed for collecting the duty which had not been levied and the procedure prescribed under section 28 will have to be followed It is futile for the Officer to contend that even though the remedy under section 28 is barred, he can avail himself of the general law and proceed against the agent of the importer The recovery of the amount of non-levy against the agent under section 147 of the Act is subject to following the procedure enacted by section 28

If the remedy to recover the amount of non-levy became time-barred, the liability to pay the duty is also extinguished, and it cannot be adjusted out of the accounts of the agent of the importer.

As the impugned order adjusted the accounts of the agent for the liability of the importer and which liability was time barred, a writ will issue to quash the illegal order, in spite of the existence of an alternative remedy

Decision of the Bombay High Court in A S. No 71 of 1963, referred.

M K. Nambiar, for *K Krishnamurthi*, for Petitioners.

G Ramanujam, for Respondent

V S —— *Petition allowed*

Natesan, J.
10th March, 1966.

Port Trust of Madras *v.* M/s. Bombay Company (P), Ltd
S A. Nos 1005 and 1550 of 1962

Workmen's Compensation Act (VIII of 1923), *section* 13—*Remedies of employer against stranger—Injury to workman—Compensation paid to workman—Injury to workman caused by tortious act of defendant's servants—Right of plaintiff to be indemnified by defendant—Suit against defendant claiming amount of compensation paid by plaintiff—Civil Court has jurisdiction—Workman on receipt of compensation under the Act precluded from filing a suit againt the tort-feasor—Right of employer to be indemnified by the tort-feasor—Different causes of action.*

The plaintiff had to pay compensation to its workman under the Workmen's Compensation Act in respect of the injuries sustained by him and then filed the present suit against the defendant claiming the amount on the ground that it was the tortious act of the defendant's servants that resulted in the permanent disablement of the plaintiff's workmen. On the question of the jurisdiction of the civil Court,

Held : The civil Court has jurisdiction to entertain the suit filed by the plaintiff against the defendant claiming the compensation paid to the workman on the ground that the injury was the result of the tortious act of the defendant's servants.

This right of indemnity is conferred on the plaintiff by the provisions of section 13 of the Act. The question whether this right is available even outside the provisions of section 13 of the Act was not finally decided.

It may be that the workman having elected to claim compensation under the Act is precluded from filing a suit for damages in tort against the tort-feasor. But that does not preclude the employer from pursuing his remedies against the tort-feasor having satisfied the workman's claim The causes of action in the two cases are entirely different.

V V Raghavan, M Francis and *P Royan,* for Appellant.

K C Jacob, S K L Rattan and *J Satyanarayanan,* for Respondent.

V S. —— *Appeal allowed.*

Venkatadri, J
24th March, 1966.

Sivagami Ammal *v.* Jagadambal
A A A O No. 154 of 1966.

Maintenance—Charge—Properties charged under maintenance decree—Sale in execution to satisfy claims of arrears of maintenance—No extinguishment of the charge—Liability for future maintenance attaches to property—Omission to mention charge in sale proclamation in execution of charge decree—No waiver or estoppel of right to maintenance.

The effect of the sale of the property, in execution of the charge decree for maintenance, to satisfy the claim for arrears of maintenance does not extinguish the charge completely and once for all. It is only a sale to satisfy the particular claim The liability in respect of maintenance payable in future remains attached to the property

The omission to mention the existence of the charge for future maintenance in the sale proclamation on the first execution petition will not amount to a waiver of the right to future maintenance or estoppel against claiming such right.

K V Venkataseshadri, for Appellant

T S Ramaswami and *M. Srinivasan,* for Respondent

V.S. —— *Ordered Accordingly.*

Venkatadri, J
6th April, 1966

Shamlal *v.* M/s Parle of Products Manufacturing Co (P.), Ltd.
A.A.O No. 405 of 1964.

Trade Mark—" Pearl " and " Parle's "—Marks deceptively similar likely to cause confusion in the minds of public—Refusal of registration

The marks " Pearl " and " Parle's " are deceptively similar and therefore likely to cause confusion in the minds of the public. The order of refusal of registration of the mark " Pearl " is justified.

M–N R C

Case Law discussed.

R Rangachari and *M. Mustafayerkhan*, for Appellant.

T Dullip Singh, for Respondent.

V S. ——— *Appeal dismissed.*

Kailasam, J
22nd *April*, 1966.

Kamalakar Vithal Gulwadi *v.*
Union of India.
W P. No 722 of 1965.

Civil Servant—Civil Service (Classification, Control and Appeal) Rules—Stoppage at the efficiency bar—No right to be heard before stoppage—No violation of principles of natural justice—Stoppage not a punishment—Constitution of India (1950), *Article* 311.

After the amendment of the Civil Service (Classification, Control and Appeal) Rules, 1954 the right of the civil servant to be heard before the stoppage at the efficiency bar had been taken away The doctrine of holding office at the President's pleasure is modified to the extent provided under the Constitution and the statutory rules. Further it cannot be said that stoppage at the efficiency bar is a punishment. The Government is entitled to say that the officer is not qualified for the higher pay Though the civil servant could be adversely affected in that he is denied a higher pay, there is no punishment, which will require that notice should be given and officer's explanation taken into consideration before the order of stoppage at the efficiency bar. It may be advisable to inform the officer that his progress is not satisfactory so that he may try and improve But the officer has no right to be heard and cannot claim a right to be heard or plead that any principle of natural justice had been violated

V. G. Rao for *Row* and *Reddy* and *N. G R Prasad*, for Petitioner.

G Ramanujam, for Respondent

V.S. ——— *Petition dismissed.*

Anantanarayanan, C.J. and
Ramakrishnan, J.
11*th July*, 1966.

S V. Viswanathan *v.*
G P. Rangaswami
W. A. No. 99 of 1965.

Madras District Municipalities Act (V of 1920), *sections* 44, 47 *and rule* 10 (c) *of the Rules framed under section* 303 (2) (a) *of the Act and Constitution of India*, 1950, *Article* 326*—Elections to municipality—Electoral roll—Inclusion of the name of voter of less than twenty one years of age—Constitutional bar—Such inclusion, a nullity and* non-est*— To be taken note of by the Election Tribunal and Courts—Reception of such vote, improper.*

Article 326 enacts that a citizen of India and who is not less than twenty one years of age, shall be entitled to be registered as a voter at an election. Where the name of the voter has been included in the Assembly Roll, infringing the provisione of Article 326 (in a case where the person was of less than the prescribed age), that part of the instrument is void and is *non est.* Apart from the question about the self-contained nature of the District Municipalities Act and the Rules framed thereunder, limiting the scope of investigation of Election Tribunals and determining their jurisdiction, when a specific breach of the Constitution in the preparation of the Statutory Instrument, whose contents have to be relied upon for decision has been brought to the notice of the Election Tribunal as well as of the High Court, effect will have to be given to the consequences which will follow from such a breach. Such a constitutional breach involves the rendering of the electoral roll a nullity so far as the disputed voter's name is concerned, and his name entered in the roll must be deemed as *non est*, for the purposes of acceptance of reception of his vote.

M. K. Nambiyar for *N. Sivamani* and *S. C. Padmanabhaswami*, for Appellants.

S. Mohan Kumaramangalam, for Respondent.

Advocate General (*N. Krishnaswami Reddi*), for Government Pleader.

V.S. ——— *Appeal allowed*

[FULL BENCH]

Veeraswami, Kunhammed Kutty and *Natesan, JJ*
18th March, 1966.

Sheik Ali *v.* Sheik Mohamed.
A A.O.No. 286 of 1960.

Civil Procedure Code (V of 1908), *section* 44-*A and Limitation Act (IX of* 1908), *Article* 181—*Execution of a decree of a Superior Court of a reciprocating territory—Limitation—"As if it had been passed by the District Court"—Meaning—Section* 44-*A* (1) *of the Code, has nothing to do with the law of limitation—Jurisdiction of the District Court—Arises on the filing of the certified copy of the foreign decree—Filing of non-satisfaction certificate—Merely procedural requirement—Filing of a certified copy of the foreign decree—No period of limitation prescribed—Three years under Article* 181 *of the Limitation Act applies for execution of foreign decree—Accrual of the right to apply from the date of filing of the certified copy of the foreign decree*

Section 44-A (1) of the Code of Civil Procedure is confined to the powers and manner of execution of foreign decrees and has nothing to do with the law of limitation The fiction created by the sub-section by the words "as if it has been passed by the District Court", goes no further and is not for all purposes, but is designed to attract and apply to execution of foreign judgments by the District Court its own powers of execution and the manner of it in relation to its decree without reference to limitation The contrary view expressed in *Uthamram* v *Abdul Kassim Co*, (1963) II M L J 412, is not correct The law of limitation as contained in the Limitation Act, as a procedural law and as *lex fori* will, however, apply, independently of section 44-A, to execution in India of a foreign judgment of a Superior Court in a reciprocating territory.

The jurisdiction of a District Court in this country to execute a foreign judgment arises from and is exercisable by the filing of a certified copy of the foreign decree or judgment It is only thereafter, and never until then the procedural laws as to *lex fori* will be attracted to execution The Limitation Act can possibly apply to such execution only after filing a certified copy of the foreign decree or judgment as required by section 44-A (1) Section 44-A (1) does not require the filing of a non-satisfaction certificate as a condition for the District Court to assume jurisdiction The requirement relates merely to procedure The contrary view held in *Uthamram* v *Abdul Kassim Co*, (1963) II M L J 412, is not correct.

There is no limitation for filing a certified copy of a foreign decree or judgment under section 44-A (1) of the Code

Article 181 of the Limitation Act is the only Article that applies to execution of a foreign judgment under section 44-A (1) The language in column 1 for this Article is not related to any particular Court. The Article prescribes a period of three years and the limitation commences when the right to apply accrues The right to apply under Order 21, rule 11 of the Code for execution of a foreign judgment accrues on and from the date of filing of a certified copy of foreign decree under section 44-A (1)

Article 183 is applicable only to execution of decrees of a Court established by Royal Charter in this country Article 182 is not applicable because that Article is confined to execution of a decree or order of any civil Court in this country.

K Rajah Iyer, for Appellant.

V K Thiruvenkatachari, for Respondent.

V S. *Appeal dismissed.*

Venkatadri, J
20th June, 1966.

The British Machinery Supplies *v.* Devaraj
C R P No 1142 of 1963.

Hire Purchase—Hirer in possession and use of the goods—Pledge of the goods by the hirer—Default in payment of instalments by hirer under the agreement—Option to terminate agreement not exercised by the owner—Rights of parties—Owner not entitled to sue pledgee for recovery of the goods

In all hire purchase agreements, there is a dual nature, where a hirer can transfer the benefit of the hiring alone while retaining the option to purchase , or he can assign the option alone, remaining in possession of the goods until the hire purchase price is paid , or he can assign his entire rights under the agreement, in which case the assignee becomes entitled both to the use of the goods and to the option to purchase.

A prohibition against the assignment must be so framed as to cover both the assignment of the benefit of hiring and the transfer of the option to purchase

A condition in the agreement that the hirer shall not sell the goods does not prohibit the hirer from assigning the benefit of hiring The pledge by the hirer would not constitute a breach of the hire purchase agreement, in the absence of a provision in the agreement expressly prohibiting the hirer from pledging or parting with possession of the goods

Once there was default in the payment of the instalments the owner could have terminated the agreement, but he has not exercised that right At the time of the pledge, the hirer has the legal possession of the goods and had a right to use the same In the circumstances, the hirer had a right or interest in the goods when he pledged the goods

The owner is not entitled to sue the pledgee to recover the goods. He can sue the hirer for damages and for the balance of the price

R Rangachari, for Petitioner

T Venkatasubramanian, for 2nd Respondent

K Venkateswara Rao, *Amicus Curiae*, on behalf of 3rd Respondent

V S

Petition dismissed

Ramakrishnan, J
8th July, 1966.

M P Govindaraj, *In re*
Crl R C No 1725 of 1964
Crl R P No 1696 of 1964

Madras Prohibition Act (*X of* 1937), *section* 3 (20) *and Madras Denatured Spirit Methyl Alcohol and Varnish* (*French Polish*) *Rules*, 1959, *Rules* 6 (ii) *and* 11—*French Polish—Tansporting from Karaikal* (*Union Territory*) *to Bangalore under a permit—Passing through the intervening State of Madras—Conviction for transporting in Madras State—Not sustainable*

Words and Phrases—Transporting

The case of the prosecution was that the petitioner was taking a quantity of French Polish from Karaikal under the strength of a gate pass issued by the authorities at Karaikal to Bangalore under a State permit issued by the Mysore Excise Department. He was charged with the offence of transporting under rule 6 (*ii*) of the Madras French Polish Rules in the intervening State of Madras

Held, the accused cannot be convicted for transporting within the meaning of rule 6 (*ii*) of the Rules Transport means transport from the starting point to the ultimate destination Merely passing through a place in the course of journey does not amount to transporting to that place. Many absurd situations will arise, if the act of transport is construed as involving a number of minor transports within any two points between the termini, comprising of the starting point and the destination

Emperor v. *Dagadu Shetiba*, 39 B L R. 1062, referred.

P. R. Gokulakrishnan, for Petitioner.

S. R. Srinivasan, for Public Prosecutor.

V.S.

Petition allowed.

Natesan, J.
18th March, 1966.

Parthasarathi Chetty *v.*
S. Chitra Pillai.
S.A. No. 29 of 1905.

Madras Buildings (Lease and Rent Control) Act (XVII of 1960), *sections* 26 *and* 35—*Order of eviction obtained against the tenant under the old Act—Binding on the sub-tenant—Executable against the sub-tenant even under the new Act of* 1960

Civil Procedure Code (V of 1908), *Order* 21, *rule* 103—*Suit to maintain possession—Question of title to present possession involved—Later suit claiming possession in a different title—Not sustainable.*

The respondent-landlord obtained an order for eviction of his tenant under the old Act In execution delivery was ordered after the Court passed an order for removal of obstruction to the appellant. The suit filed by the appellant to set aside that order on the ground that he was the chief tenant entitled to the possession, was finally dismissed by the High Court in second appeal on the finding that he was only a sub-tenant bound by the order of eviction passed against the tenant. The appellant then filed the present suit contending that he was a sub-tenant, not impleaded in the rent control proceedings as a party and hence the order for eviction has become inexecutable after the Rent Control Act of 1960 was enacted. In the second appeal.

Held, The provisions of sections 26 and 35 of the Act of 1960 do not render the order of eviction obtained under the old Act against the tenant unavailable as against the sub-tenant who was not impleaded to the proceedings under the old Act.

In a suit instituted under Order 21, rule 103 of the Civil Procedure Code, by a person in possession who is sought to be dispossessed the questions that are tried are questions of title to the present possession. The claim to the same relief cannot be tried once over again between the same parties, just because in the latter suit the title on which relief is claimed purports to be different from the one the plaintiff had put forward earlier.

N. C. Raghavachari and *N S. Varadachari,* for Appellant.

A Sundaram Ayyar, S. Padmanabhan and *O. K. Sridevi,* for Respondent.

V.S. *Appeal dismissed.*

Kailasam, J.
24th March, 1966.

Vallimayil Ammal *v.*
Commissioner of Enquiry.
W.P. No 981 of 1965.

Commissions of Enquiry Act (LX of 1952)—*Appointment of Commission to enquire into a case of Police firing—Son of the petitioner, one of those who were killed in the incident—Examination of witnesses—Opportunity to petitioner to cross-examine witnesses in regard to the reputation of the deceased—Enquiry by Commission,* quasi-judicial *in nature—Judicial approach even though decision itself may not have binding force—Principles of natural justice equally applicable to such enquiries by Commission—Writ of* certiorari.

As the rights of parties are involved and as the Commission of Inquiry is to Act objectively in submitting the report, the exercise of its functions is *quasi judicial* in nature.

When the authority making a decision which may affect the rights of parties is required to adopt a judicial approach even though the decision by itself may not take effect, the proceeding will be *quasi-judicial.*

The principle of natural justice is applicable not only to the authorities that could decide the matter finally but also to authorities who were called upon to submit a report for further consideration by some other body.

M—N R C

In the absence of any rules prescribed by the State Government, the Commission of Inquiry is bound as a matter of necessary implication to observe the principles of natural justice in its proceedings.

The petitioner should be allowed an opportunity to make any relevant statement which she may desire to make and a fair opportunity to correct, and controvert any relevant statement brought forward to her prejudice. It is clear from the nature of the report called for from the Commission, the mode of inquiry prescribed and the position of the petitioner, whose son's reputation is likely to be affected, that the right of the petitioner to cross-examine the witnesses, whose evidence is likely to affect the reputation of the petitioner's son, cannot be denied

K. V. Sankaran, R. Ganesan and *D. Pandian,* for Petitioner.

K. S Bhakthavatsalam, for the Additional Government Pleader on behalf of Respondent.

V.S. *Petition allowed.*

Srinivasan, J.
8th April, 1966.

The Workmen of Tinnevelly-Tuticorin Electric Supply Co , Ltd *v.* Industrial Tribunal.
W.P. No. 657 of 1963.

Industrial Dispute—Bonus—Available surplus—Full Bench formula—Workmen employed in electric supply company—Amounts refundable to consumers under the Electric Supply Act—Cannot be termed a prior charge—Deduction from gross profits proper—Depreciation of plant and machinery—Triple shift allowance—Items of machinery on duty round the clock—Allowance deductible—Four per cent return on working capital—Four per cent only on reserves used as working capital—Rehabilitation charge—Onus of proof on employer—Multiplier and divisor.

The sum refundable to the consumers under the Electricity Supply Act, as the charge for the supply of energy had been levied from the consumers at a higher rate than what the law prescribed, cannot be given the nomenclature of a prior charge for the purpose of arriving at the available surplus for payment of bonus. In the eye of the law, any amount collected over and above what would be a reasonable return is not part of the income of the licensee. It is only if it is income of the licensee that the question of regarding it as a prior charge arises.

In the context of a dispute with regard to bonus being based upon the profits of the concern, it is not the income-tax law that can possibly say the last word in respect of depreciation. It would not be untrue to say that the Income-tax Law makes allowances for depreciation only on a notional scale as it were and does not in all cases cover the true depreciation that a piece of machinery might suffer. When once it cannot be denied that the items of machinery are on duty right round the clock, an extra shift allowance is permissible for the purposes of arriving at the distributable profits.

The view taken by the Tribunal that four per cent return can be calculated on the working capital computed as the difference between the current assets and current liabilities is certainly erroneous Four per cent return contemplated by the Full Bench formula refers only to reserves used as working Capital

In regard to deduction of rehabilitation charges, the onus of proof is on the employer The multiplier has to be determined on the basis of the increase in the prices and the divisor should be arrived at on proof of the expectation of life of the machinery. In so far as the machinery employed in the electrical undertakings is concerned its economic life has been given in Schedule VII to the Act and the estimate of life so given in the Act must be taken as having been reached after exten-

sive study, research and actual working The multiplier is the ratio between the cost price of the plant and machinery and its probable cost price when it requires to be replaced

In the absence of evidence justifying the adoption of the multipliers used in the case, the Tribunal was not justified in accepting the figures given by the Management.

N. G. R Prasad, for *Row and Reddy*, for Petitioner

M R Narayanaswami, for Respondent

V.S. *Petition allowed*

Venkatadri, J.
15*th April*, 1966.

Sivappa Naicker *v.*
Sarangapani Naicker.
S.A. No. 1216 of 1963.

Transfer of Property Act (IV of 1882), *section* 53-*A—Part performance—Transferee in possession under a deed of exchange—Transfer of patta to transferee—Deed of exchange unregistered, and hence invalid.—Right of transferee to resist claims of transferor—Right exercisable to transfers either as plaintiff or defendant in an action.*

The appellants-plaintiffs are entitled to rely on the doctrine of part performance as embodied in section 53-A of the Transfer of Property Act.

It is well settled, that when in pursuance of an agreement to transfer property, the intended transferee has taken possession though the requisite legal document has not been executed and registered, the position is the same as if the documents had been executed provided specific performance can be obtained between the parties to the agreement, in the same Court, and at the same time when the subsequent legal question falls to be determined.

The right to resist the claim of the transferor given under section 53-A can be exercised irrespective of the fact whether the transferee was arraigned as plaintiff or defendant in the suit.

V. Vedantachari and *R. K. Thatachari*, for Appellant.

V Srinivasa Ayyar and *K. Raman* for Respondent.

V.S. *Appeal allowed.*

Veeraswami and
Natesan, JJ
24*th June*, 1966.

Haji J A Kareem Sait *v.*
Deputy Commercial Tax Officer, Mettupalayam
W.P Nos 4052 to 4056 of 1965.

Central Sales Tax Act (LXXIV of 1956) *sections* 9 (3) *and* 13 *and Central Sales Tax (Madras) Rules,* 1957, *rule* 5 (7)—*Notice of assessment of escaped turnover of inter-State sales—Action under rule* 5 (7) *unauthorised and* ultra vires—*Sustainable under section* 9 (3)—*Levy on collection—State Sales Tax Authority empowered to levy and collect.*

Interpretation—Statute—Legislation by Parliament by reference and adoption of State law—Existence of the local law essential—Local law re-enacted in substantial form —Validity of legislation by reference and adoption.

Rule 5 (7) of the Central Sales Tax (Madras) Rules is unauthorised and is *ultra vires* the State Government. This sub-rule provides for (1) assessment of escaped turnover, (2) period of limitation for applying the power to assess such turnover and (3) determination by best judgment of the escaped turn-

over. The provisions of the Central Act do not themselves provide for any of these matters and certainly section 13 (4) of the Act does not specifically confer power on the State Government to make a rule like sub-rule (7).

But section 9 (3) of the Central Act enables and empowers the department to take the proceedings against the assessee, and enacts that the State Sales Tax Authorities shall assess, collect and enforce payment of the Central tax in exactly the same way as under the local sales tax law and for that purpose the authorities will have same powers as they possess under such law to assess, collect and enforce local sales tax.

Where Parliament intends to adopt, for purposes of Central legislation, any particular provisions of a State law, it can do so by reference to those provisions instead of reiterating them verbatim. But it cannot make a law adopting the provisions of a local law which did not exist at the time. Looking at the substance and not form of the matter, section 16 of the Madras General Sales Tax Act of 1959 has substantially re-enacted the provisions of the 1939 Act relating to assessment of escaped turnover and the period of limitation for exercising that power. Section 9 (3) is therefore not unconstitutional

M. K Nambiar for *K K. Venugopal* and *S. Ramalingam,* for Petitioner.

Special Government Pleader, for Respondent.

V.S. *Petitions dismissed.*

[SUPREME COURT]
K. Subba Rao and
V Ramaswami, JJ.
26th April, 1966.

Vemareddi Ramaraghava Reddy v.
Konduru Seshu Reddy.
CA No 265 of 1964.

Madras Hindu Religious and Charitable Endowments Act (L of 1951)—*Madras Act II of* 1927—*Specific Relief Act, section* 42—*Civil Procedure Codes,* 1859 *and* 1877—*Effect of compromise—Legislative History discussed*

The worshipper of a Hindu temple is entitled, in certain circumstances, to bring a suit for declaration that the alienation of the temple properties by the *de jure* Shebait is invalid and not binding upon the temple. If a Shebait has improperly alienated trust property a suit can be brought by any person interested for a declaration that such alienation is not binding upon the deity but no decree for recovrey of possession can be made in such a suit unless the plaintiff in the suit has the present right to the possession. Worshippers of temples are in the position of "*cestui que* trustees or beneficiaries in a spiritual sense See *Vidyapurna Thirthaswami* v *Vidyanidhi Tirthaswami (died)*, (1904) I L R. 27 Mad 435 at 451 : 14 M L J 105 Since the worshippers do not exercise the deity's power of suing to protect its own interests, they are not entitled to recover possession of the property improperly alienated by the Shebait, but they can be granted a declaratory decree that the alienation is not binding on the deity (see for example *Kalyana Venkataramana Aiyangar* v. *Kasturi Ranga Aiyangar*, (1916) 31 M L J 777 : I L R 40 Mad 212 and *Chidambaranatha Thambiran* v *Nallasiva Mudaliar*, (1917) 33 M L J. 357 : I L R. 41 Mad 124). It has also been decided by the Judicial Committee in *Abdur Rahim* v. *Syed Abu Mohammed Barkat Ali Shah*, (1927) L R 55 I.A 96 : 54 M L J 609 : that a suit for a declaration that property belongs to a wakf can be maintained by Mahomedans interested in the wakf without the sanction of the Advocate-General, and a declaration can be given in such a suit that the plaintiff is not bound by the compromise decree relating to wakf properties.

In our opinion, section 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the Courts have power to grant such a decree independently of the requirements of the section. It follows therefore in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of section 42 of the Specific Relief Act

P Babula, K Rajendra Chaudhuri and *K. R Chaudhuri*, Advocates for Appellants.

P Ram Reddy and *A V. V. Nair*, Advocates for Respondent No. 1.

T. V. R. Tatachari, Advocate for Respondent No. 2

G.R. ——— *Decree modified.*

[SUPREME COURT]
K. N Wanchoo, M. Hidayatullah,
S. M Sikri, V Ramaswami and
J M Shelat, JJ
3rd May and 27th July, 1966.

Jaichand Lal Sethia v.
The State of West Bengal.
Crl A. No. 110 of 1966.

Defence of India Rules (1963)—*Rule* 30—Habeas Corpus *Petition*—Mala fide *detention*—*Articles* 14, 21, 19, 22, 358, 359 (1) *of the Constitution.*

Even though the order as drawn up recites that the State Government was satisfied, the accuracy of that recital can be challenged in Court to a limited extent. The accuracy can be challenged in two ways either by proving that the State Government never applied its mind to the matter or that the authorities of the State Government acted *mala fide* In a normal case the existence of such a recital in a duly authenticated order will, in the absence of any evidence as to its inaccuracy, be accepted by the Court as establishing that the necessary condition was fulfilled. In other words, in a normal case the existence of such a recital in a duly authenticated

order that the State Government was satisfied will, in the absence of any evidence to the contrary, be accepted by the Court as establishing that the State Government was so satisfied. If the order of detention itself suffers from any lacuna it is open to a Court in a proper case to call for an affidavit from the Chief Minister or other Minister concerned or to call for the relevant file from the State Government, in order to satisfy itself as to the accuracy of the recital made in the order of detention.

For instance, in *Biren Dutta etc* v *Chief Commissioner of Tripura*, (1965) M L J. (Crl.) 321 . (1965) 1 S C J. 678 (1964) 8 S C R. 295 A.I R 1965 S.C. 596, this Court made an order directing the Chief Secretary to the Tripura Administration to transmit to this Court the original files in respect of the detenus and also directed the Minister conerned or the Secretary or the Administrator to file an affidavit in this Court stating all the material facts indicating whether the decision arrived at was duly communicated to the detenus concerned But the order for production of the file and for affidavit from the Minister or the Secretary concerned was made in that case because the appellant alleged that the order of review had not been reduced to writing under rule 30-A (8) and the relevant conditions prescribed by the rule had not been complied with and that it had not been communicated to him. Reference was made by Mr. N C Chatterji to another case Writ Petition No. 97 of 1965 decided on 17th December, 1965 *Jagannath Misra* v. *The State of Orissa*, A I R. 1966 S.C. 1140, in which this Court ordered the Home Minister to file an affidavit. In that case the order of detention was defective because the authenticated copy of the order mentioned six grounds with the disjunctive "or" mentioned in the affidavit of the Chief Secretary Some of these grounds were followed by "etc." In view of the ambiguity of the order this Court made a direction asking the State Government to produce the original order which was in the form of a document and also called for an affidavit from the Home Minister who was in charge of matters of detention In the present case, the material facts are different from those in *Jagannath Misra* v. *The State of Orissa*, A I.R 1966 S C 1140, and in *Biren Dutta etc.* v *Chief Commissioner of Tirupura*, (1965 1 S C J 678 : (1965) M.L.J. (Crl.) 321 · (1964) 8 S C R. 295 . A I R. 1965 S C 596 It follows therefore that the High Court was justified in not making an order for discovery or production of the original departmental file containing the activities of the appellant by the Government of West Bengal.

N. C Chatterjee, Senior Advocate (*S K Dutta* and *D. N. Mukherjee*, Advocates, with him), for Appellant.

C. K. Daphtary, Attorney-General for India and *B Sen*, Senior Advocate, (*P. K. Chatterjee* and *P. K. Bose*, Advocates, with them), for Respondents.

G R. *Appeal dismissed.*

[SUPREME COURT.]

M Hidayatullah,
V Ramaswami and
J M Shelat, JJ.
28th July, 1966.

Pampapathy and Shekarappa v. State of Mysore.
Crl.A. Nos. 121 and 122 of 1966.

Criminal Procedure Code. (*V of* 1898), *section* 561-A—*High Court if can cancel bail granted under section* 426

The question of law arising for determination in these appeals is whether, in the case of a person convicted of a bailable offence where bail has been granted to him under section 426 of the Criminal Procedure Code, it can be cancelled in a proper case by the High Court in exercise of its inherent power under section 561-A of the Criminal Procedure Code?

The argument put forward on behalf of the appellants is that if the Legislature intended to confer such a power on the appellate Court under section 426 it would have been very easy for it to add an appropriate sub-section and make an express provision for such a power. The omission to make such an express provision is,

according to Mr. Ramamurthy, not a result of inadvertence but it is deliberate, and if that is so, it will not be permissible to take recourse to the provisions of section 561-A to clothe the appellate Court with power to cancel the bail in a case falling under section 426, Criminal Procedure Code

If it is true that, in section 496 and section 497 (5) the Legislature has made express provision for the cancellation of a bail bond in the case of accused persons released on bail during the course of the trial but no such express provision has been made by the Legislature in the case of a convicted person whose sentence has been suspended under section 426 and there has been an order of release of the appellant on bail There is obviously a lacuna but the omission of the Legislature to make a specific provision in that behalf is clearly due to oversight or inadvertence and cannot be regarded as deliberate If the contention of the appellants is sound it will lead to fantastic results

Such a situation could not have been in the contemplation of the Legislature and, in our opinion, the omission to make an express provision in that behalf is manifestly due to oversight or inadvertence. In a situation of this description the High Court is not helpless and in a proper case it may take recourse to the inherent power conferred upon it under section 561-A of the Criminal Procedure Code.

The inherent power of the High Court mentioned in section 561-A, Criminal Procedure Code can be exercised only for either of the three purposes specifically mentioned in the section The inherent power cannot be invoked in respect of any matter covered by the specific provisions of the Code . It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provisions of the Code that section 561-A can come into operation. No legislative enactment dealing with procedure can provide for all cases that can possibly arise and it is an established principle that the Courts should have inherent powers, apart from the express provision of law, which are necessary to their existence and for the proper discharge of the duties imposed upon them by law. This doctrine finds expression in section 561-A which does not confer any new powers on the High Court but merely recognises and preserves the inherent powers previously possessed by it We are, therefore, of the opinion that in a proper case the High Court has inherent power under section 561-A, Criminal Procedure Code, to cancel the order of suspension of sentence and grant of bail to the appellant made under section 426, Criminal Procedure Code and to order that the appellant be re-arrested and committed to jail custody

Considering the arguments of the appellant's counsel relying on *Lala Jairam Das* v *King Emperor*, (1945) L R. 72 I A 120 : (1945) 2 M L J. 40 the Court held the ratio of the decision of the Judicial Committee is therefore different and has no application to the present case.

In our opinion, the allegations made against the appellants would *prima facie* indicate abuse of the process of the Court and the provisions of section 561-A are attracted to the case and the High Court was entitled to cancel the bail of the appellants under the provisions of that section

M K Ramamurthi, *R K Garg* and *S C Agarwala*, Advocates of *M/s. Ramamurthi & Co.*, for Appellants (In both the appeals) :

R. Gopalakrishnan and *B. R G K. Achar*, Advocates, for Respondents (In both the appeals).

G.R. *Appeal dismissed.*

[SUPREME COURT.]

K N Wanchoo, J. C Shah and R S Bachawat, JJ.
4th August, 1966.

Satrughan Isser v. Sabujpari.
C.A. No 939 of 1963.

Hindu Law—Section 3 of Act (XVIII of 1937) as amended by Act XI of 1938—Hindu women's estate —Coparcenary property.

A Hindu coparcenary under the Mistakshara School consists of males alone : it includes only those members who acquire by birth or adoption interest in the coparcenary property. The essence of coparcenary property is unity of ownership which is vested in the whole body of coparceners While it remains joint, no individual member can predicate of the undivided property that he has a definite share therein. The interest of each coparcener is fluctuating, capable of being enlarged by deaths, and liable to be diminished by the birth of sons to coparceners. it is only on partition that the coparcener can claim that he has become entitled to a definite share The two principal incidents of coparcenary property are that the interest of coparceners devolves by survivorship and not by inheritance and that the male issue of a coparcener acquires an interest in the coparcenary property by birth, not as representing his father but in his own independent right acquired by birth.

On the finding recorded by the trial Court which was not challenged in appeal before the High Court, Babuji did not separate in 1934 from the other coparceners. But he died in October, 1937 and by the operation of Act XVIII of 1937 as modified by Bihar Act VI of 1942 Chando Kuer was invested with her husband's interest in the coparcenary property—agricultural as well as non-agricultural. When she instituted a suit for partition that interest became defined, and vested in her free from all claims or rights of the coparceners of her husband The right of the coparceners to taks that interest by survivorship on Chando Kuer's death was then extinguished On her death, even though the interest was not separated by metes and bounds, and was not in her exclusive possession it still devolved upon the nearest heirs of her husband, her daughters. The suit was therefore rightly decreed by the High Court.

U. P. Singh, for Appellant.

D. Goburdhan, for Respondents Nos. 1 and 2

K. R. Chaudhuri, for Respondent No 9.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

K. N. Wanchoo, J. C. Shah and *R. S. Bachawat, JJ.*
5th August, 1966

Faquir Chand *v.* Sardarni Harnam Kaur
C.A. No. 572 of 1963.

Hindu Law—Father's right to mortgage immovable property for antecedent debt incurred without legal necessity—Sons right to restrain the execution of the decree or the sale of the property in execution proceedings without showing either that there is no debt for which the father is personally liable to be paid or that the debt has been incurred for an illegal and immoral purpose.

Relying upon the proposition laid down by the Privy Council in *Brij Narain* v. *Mangla Prasad*, (1923) L.R. 51 I.A. 129 at 139 : 46 M.L.J. 23 which was approved by the Supreme Court in *Luhar Amritlal Nagji* v. *Doshi Jayantilal Jethalal*, (1960) 3 S.C.R. 842, 852-853 : A.I.R. 1960 S.C. 964, the Court held,

The decree against the father does not of its own force create a mortgage binding on the son's interest. The security of the creditor is not enlarged by the passing of the decree. In spite of the passing of the preliminary or final decree for sale against the father, the mortgage will not, as before, bind the son's interest in the property, and the son will be entitled to ask for a declaration that his interest has not been alienated either by the mortgage or by the decree.

It follows that in the absence of a finding on the question of legal necessity, this appeal cannot be completely disposed of. The Courts below have not recorded any finding on this issue. Normally, we would have remanded the matter to the High Court for a finding on the point. But considering that the litigation is now pending for the last 14 years and the sale of the property has been improperly stayed for a long time, we have thought it fit to examine for ourselves the evidence on the record with regard to this issue.

If Murarilal was carrying on a business, it is not disputed that the business was a joint family business. The loan of Rs. 75,000 was thus taken by Murari Lal partly for payment of antecedent debts and partly for purposes of his family business and other legal necessities. The mortgage in its entirety bound the property including the interest of the sons.

B. P. Maheshwari, for Appellant.

Harbans Singh, for Respondent No. 1.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

K. Subba Rao, C.J., M. Hidayatullah, S. M. Sikri, V. Ramaswami and *J. M. Shelat, JJ.*
8th August, 1966.

Chandra Mohan *v.* The State of Uttar Pradesh.
C.A. No. 1136 and 1638 of 1966.

U.P. Higher Judicial Service Rules—"Meaning of Judicial Officers"—Articles 233, 236, 14 *and* 16 *of the Constitution—Powers of the Governor—Whether the Rules are* ultra vires *the Constitution—Powers of the High Court to appoint District Judges.*

The fact that in Article 233 (2) the expression "the service" is used whereas in Articles 234 and 235 the expression "judicial service" is found is not decisive of the question whether the expression "the service" in Article 233 (2) must be something other than the judicial service, for, the entire chapter is dealing with the judicial service. The definition is exhaustive of the service. Two expressions in the definition bring out the idea that the judicial service consists of hierarchy of judicial officers starting from the lowest and ending with District Judges. The expressions "exclusively" and "intended" emphasise the fact that the judicial service consists only of persons intended to fill up the posts of District Judges and other civil judicial posts and that is the exclusive service of judicial officers. Having defined "judicial service" in exclusive terms, having provided for appointments to that service and having entrusted the control of the said service to the care of the

High Court the makers of the Constitution would not have conferred a blanket power on the Governor to appoint any person from any service as District Judges.

We, therefore, construe the expression "the service" in clause (2) of Article 233 as the judicial service.

Till India attained independence, the position was that District Judges were appointed by the Governor from three sources, namely, (i) the Indian Civil Service, (ii) the Provincial Judicial Service, and (iii) the Bar But after India attained independence in 1947, recruitment to the Indian Civil Service was discontinued and the Government of India decided that the members of the newly created Indian Administrative Service would not be given judicial posts Thereafter District Judges have been recruited only from either the judicial service or from the Bar. There was no case of a member of the executive having been promoted as a District Judge. that was the factual position at the time the Constitution came into force, it is unreasonable to attribute to the makers of the Constitution, who had so carefully provided for the independence of the judiciary, an intention to destroy the same by an indirect method What can be more deleterious to the good name of the judiciary than to permit at the level of District Judges, recruitment from the executive departments? Therefore, the history of the services also supports our construction that the expression "the service" in Article 233 (2) can only mean the judicial service.

M/s Ramamurthi & Co., for Appellant (In both the appeals).

O P. Rama, for Respondent No. 1 (In both appeals)

B P Maheshwari, for Respondent Nos 2 to 4 (In both appeals)

J. P Goyal, for Respondent No 5 (In both appeals)

O P Verma, for Respondent No 7 (In both appeals).

Naunit Lal, for Intervener (In C A No 1136 of 1966)

G R. —— *Appeals dismissed*

Venkatraman, J
29th June, 1966.

D A S. Swami *v* Kubendran
Crl R C No 763 of 1966
Crl R P No 747 of 1966

Criminal Procedure Code (V of 1898), *Section* 4 (1) *(r)—Pleader—Person other than an Advocate, Vakil and an Attorney—Permission of Court to act for the accused—Requirement of permission—No violation of fundamental rights*

The definition of "pleader" in section 4 (1) (*r*) of the Criminal Procedure Code means that a person who is not an Advocate, Vakil or Attorney, requires the permission of the Court to become a Pleader as defined Such a person has no right to argue the case of the accused without obtaining the permission of the Court.

The requirement of such a permission does not amount to interference with the fundamental rights of the accused under Article 19 (1) (*f*) of the Constitution The definition is intended to regulate the procedure in a Criminal Court and from that point of view reasonable Section 4 (1) (*r*) does not purport to affect the general right of the petitioner to carry on the occupation of being a power-of-attorney, agent of others. It comes into play only where such a person seeks to act for the accused and plead for him Assuming that the petitioner is carrying on an occupation within the meaning of Article 19 (1) (*g*) of the Constitution, section 4 (1) (*r*) can be justified under Article 19 (6) of the Constitution which itself enables the State to make a law relating to professional or technical qualifications necessary for practising any profession, or carrying on any occupation

D A. S Swami, party in person

K. A Panchapakesan, for the Public Prosecutor

V S —— *Petition dismissed.*

[SUPREME COURT.]

V. *Ramaswami*, *V Bhargava* and *Raghubar Dayal*, *JJ*.
31*st August*, 1966.

Bakhashish Singh Dhaliwal *v*. The State of Punjab.
Cr. As. Nos. 150-151 and 196-199 of 1962.

Penal Code (*XLV of* 1860), *sections* 417 *and* '420—*Scope*—*Criminal Procedure Code* (*V of* 1898), *section* 197—*Sanction of Central Government*—*When essential for prosecution for cheating and abetment*

In every case where property is delivered by persons cheated, there must always be a stage when the person makes up his mind to give the property on accepting the false representations made to him. It cannot be said that in such cases the person committing the offence can only be tried for the simple offence of cheating under section 417, Indian Penal Code and cannot be tried under section 420 because the person cheated parts with his property subsequent to making up his mind to do so. The conviction of the appellant for the offence under section 420, Indian Penal Code in these circumstances is in no way vitiated.

The liability of the appellant for conviction for the offence of cheating was challenged on one other ground. It was urged that the appellant left Burma on 15th April, 1942, while the claims which had been found to be bogus related, at least to a considerable extent, to works alleged to have been done or materials alleged to have been supplied after that date, so that the appellant could have no personal knowledge that the claims put forward by him were bogus. The finding of fact recorded by the High Court in respect of the charges for which the appellant has been convicted is that the work to which the claims related were not carried out at all, or that the supplies concerned were never made Once the finding is categorically recorded in this manner, we do not think there was any burden placed on the prosecution to establish that the appellant had personal knowledge of the bogus nature of his claims Knowledge involves the state of mind of the appellant and no direct evidence of that knowledge could possibly be given by the prosecution. The very fact that the claims were bogus and did not accord with the true facts, leads to the inference that the appellant knew that the representations which he was making in these claims were false It is significant that the appellant had not come forward with any explanation that he made these claims on the basis of information given to him by any particular person whose word he had no reason to doubt. In fact, the claim purported to be based on the facts that the appellant knew that he was entitled to the amounts included in the claims because he had carried out the works or had supplied the materials relating to the claims.

The next point urged was that in this case the trial of the appellant was vitiated because up to a certain stage he was tried together with Henderson who was charged with the offence of abetment of cheating under section 420 read with section 109, Indian Penal Code and Henderson was put to trial without any sanction of the Central Government under section 197 of the Code of Criminal Procedure.

Applying its decision in *K Satwant Singh* v. *The State of Punjab*, (1960) 2 S.C.R. 89. (1960) M L J (Crl) 603 . (1960) S C J 863 . A.I.R 1960 S C. 266, the Court held : that sanction under section 197 of the Code of Criminal Procedure was not required for a valid trial of Henderson for the offence of abetment of cheating because it cannot be held that a public servant committing such an offence is acting in the discharge of his duties as such.

The appellant was not a Government servant but only an independent contractor and in his case, therefore, there was no question of any sanction of the Central Government being obtained under section 197 of the Code of Criminal Procedure. The trials would, therefore, be unaffected by the want of sanction of the Central Government for the prosecution of Henderson.

The validity of the trials was also challenged before us on the ground that the Special Tribunal which recorded the convictions of the appellant was not constituted in accordance with law and was incompetent to hold the trials. The Court held

Further, when the Tribunal later on functioned with only one single member, the law had already been altered by Punjab Act X of 1950 which provided for change of composition of the Special Tribunal and laid down that instead of three members, the Tribunal was to be composed of one member only. The Tribunal thus, at each stage, was properly constituted and functioned competently.

The next point that the appellant was not given an adequate opportunity to produce his defence evidence the Court held It is now too late for the appellant to make a fresh grievance in this Court that the witnesses in Pakistan were not examined. The others were given up as they were not available There has, therefore, been no failure to examine witnesses in England

In the result, all the appeals are dismissed, subject to the modification that the compulsory fine imposed on the appellant in respect of charge No 21 which was the subject-matter of Criminal Appeal No. 478 of 1949 in the High Court, is reduced from Rs 1,08,400 to Rs 54,200

R. L Anand, H L. Sibal, Senior Advocates (*R. L Kohli* and *J. C Talwar,* Advocates), for Appellant.

Purshottam Trikumdas, Senior Advocate (*Kartar Singh Chawla* and *R. N. Sachthey,* Advocates), for Respondent

G.R ——— *Appeals dismissed.*

[SUPREME COURT.]

V. Ramaswami, V Bhargava and *Raghubar Dayal, JJ.*
23rd September, 1966.

M. L Sethi *v.* R P Kapur.
Cr A. No 110 of 1965.

Criminal Trial—First complaint under sections 420, 109, 114 *and* 120-*B, Penal Code—Second complaint under sections* 204, 211 *and* 385, *Indian Penal Code—Competency.*

The only point that falls for determination by this Court is whether, in this case, cognizance of the complaint, which included an offence under section 211. Penal Code, filed by the respondent against the appellant, was rightly or wrongly taken by the Courts.

In dealing with this question of law, the important aspect that has to be kept in view is that the point of time at which the legality of the cognizance taken has to be judged is the time when cognizance is actually taken under section 190, Criminal Procedure Code Under the Code of Criminal Procedure which applies to trials of such cases, the only provision for taking cognizance is contained in section 190. Section 195 which follows that section, is, in fact, a limitation on the unfettered power of a Magistrate to take cognizance under section 190.

Mr. Frank Anthony on behalf of the appellant urged before us that even in those cases where there may be no pending proceeding in any Court, nor any proceeding which has already concluded in any Court, the bar of section 195 (1) (*b*) should be held to be applicable if it is found that a subsequent proceeding in any Court is under contemplation. We do not think that the language of clause (*b*) of sub-section (1) of section 195 can justify any such interpretation.

We, consequently, hold that in this case, the complaint which was filed by the respondent, was competent and the Judicial Magistrate at Chandigarh, in taking cognizance of the offence only exercised jurisdiction rightly vested in him. He was not barred from taking cognizance of the complaint by the provisions of section 195 (1) (*b*), Criminal Procedure Code.

Frank Anthony, R L. Kohli and *J. C. Talwar,* Advocates, for Appellant.

Respondent No. 1 in Person.

O. P. Rana, for Respondent No. 2 (State)

G.R. ——— *Appeal dismissed.*

Kailasam, J.
29*th June*, 1966.

M. Venkatesan v.
Secretary, Regional Transport Authority.
W P. Nos. 4280 etc of 1965.

Motor Vehicles Act (IV of 1939), *sections* 44 (5), 60, 68 *and rule* 134-*A* (11)—*Powers of Regional Transport Authority to cancel or suspend a permit—Delegation of the power of suspension only made to the Secretary, Regional Transport Authority—Valid*

Section 44 (5) of the Act empowers the Regional Transport Authority, if authorised by rules made under section 68, to delegate such of its powers and functions to such authority or person and subject to such restrictions, limitations and conditions as may be prescribed by the said Rules Section 68 confers on the State Government the power to make rules Section 60 clearly, provides for imposing the punishment of cancellation as well as suspension of a permit. Therefore the delegation by the Regional Transport Authority, under section 44 (5), to the Secretary, Regional Transport Authority, the power to suspend a permit alone, is valid. There can be no objections to one authority being empowered to cancel and another authority being empowered to suspend.

K. K. Venugopal, C S. Prakasa Rao and *M. N. Rangachari*, for Petitioner.

The Additional Government Pleader on behalf of State.

V.S. ——— *Petitions dismissed.*

Natesan, J.
27*th July*, 1966.

Krishnappa Goundar *v.*
Ramalinga Mudaliar.
S A No. 1430 of 1962.

Transfer of Property Act (IV of 1882), *section* 53, *Proviso*—Bona fide *transferee from the original fraudulent transferor*—Bona fide *transferee from a fraudulent transferee—Protection attended by the proviso.*

In a prior suit filed by the first defendant against the second defendant and a purchaser of the property of the second defendant, it was held that the purchaser had title to the property and the first defendant was only entitled to a personal decree against the second defendant in respect of the advances paid to him. The plaintiff, subsequent purchaser from the vendee of the second defendant sued to set aside a summary order.

Held, the proviso to section 53 of the Transfer of Property Act protected not only a *bona fide* transferee from an original fraudulent transferor but also a *bona fide* transferee from a fraudulent transferee

Kunhu Pottanassiar v. *Ram Nair*, I L.R 46 Mad. 478, referred.

S M Amzad Nainar, for Appellant.

T V. Balakrishnan and *N Vanchinathan*, for Respondent.

V.S. ——— *Appeal dismissed*

Ramamurthi, J.
16*th September*, 1966.

Public Prosecutor, Madras *v.*
Raj Mohan Gandhi.
Cil M P No 2304 of 1966.

Criminal Procedure Code (V of 1898), *sections* 552, 561-*A*—*Powers to compel restoration of abducted females—Analagous to the issue of writ of* habeas corpus—*Unlawful detention and unlawful purpose, essential conditions—Release of woman in unlawful detention, pending application under section* 552—*Jurisdiction to make further enquiry or orders—Unlawful purpose, not to be a collateral purpose—Release of abducted woman from unlawful custody pending application under section* 552—*Order of Court requiring her presence and the presence of her father—Order without jurisdiction liable to be quashed by High Court in exercise of inherent powers—Detention of a woman in the Office of Commissioner of Police in connection with investigation of an offence committed by another—Cannot be termed unlawful.*

The principles which govern the exercise of the jurisdiction of the Court in a proceeding under section 491 of the Code would apply to a proceeding under section 552 of the Code.

The object of the proceedings under the section is to release from present illegal detention and not to punish the previous illegality If the Court is satisfied that the body whose production is asked for is not in the custody, power or control of the person to whom it is sought to address the writ, a writ of *habeas corpus* is not the proper remedy, though there was an original illegal taking and detention. The position, of course, may be different where the plea that the person charged has lost control or custody of the person concerned is found to be false, and the detention was proved to be continued by someone who is really the agent of the original wrongdoer, with a view to persist in the unlawful detention.

Section 552 of the Code applies if the person against-whom the order is made must be unlawfully detaining the woman and for an unlawful purpose The section cannot apply if the person, is neither unlawfully detaining the woman nor having the custody of the woman for any unlawful purpose. The section is not the machinery for taking action against a person who had the custody of the woman at some earlier point of time but lost it at the time of the application.

The detention of a woman in the Office of the Commissioner of Police in connection with the investigation of an offence registered against an offender cannot be termed unlawful within the meaning of section 552 of the Code.

Unlawful purpose cannot comprehend a colleteral unlawful purpose having no relation whatsoever to the welfare and good interests of the woman sought to be detained. The unlawful purpose must be something wholly personal to the woman, like making an attempt to marry her to some person against her wishes or the wishes of her guardian, or making attempts to use her for immoral purposes, like prostitution.

If the alleged purpose was to extract admission from the girls to implicate the applicant in proceedings under section 552, in some offence, that would be a collateral purpose falling outside the scope of section 552 of the Code.

If during the pendency of the application under section 552 the concerned woman is released, the Court cannot be called upon to embark on an enquiry as to the circumstances under which the woman was detained previously.

It cannot be said that no enquiry at all could be held in a proceeding under section 552 or 491. Matters germane to a proceeding under the sections may have to be enquired into either by calling for affidavits or by summoning to appear for satisfying the Court on the preliminary facts.

In the exercise of the inherent powers possessed by the High Court under section 561-A, the High Court would quash the proceedings of the lower Court taken under section 552 of the Code without jurisdiction.

Public Prosecutor, for Appellant.

R. M Seshadri, for Respondent.

V.S. *Petition allowed.*

[SUPREME COURT.]

K. Subba Rao, C J. and
J M. Shelat, J
22nd August, 1966.

Hasan Nurani Malak v.
Assistant Charity Commissioner,
Nagpur.
C A. No. 498 of 1964.

Bombay Public Trusts Act (1950), *section* 19—*Madhya Pradesh Public Trust Act* (*XXX of* 1951), *sections* 5, 6, 7 *and* 8—*The Bombay Public Trust* (*Unification Amendment*) *Act*, 1959—*Definition of Public Trust under section* 2 (4) *of the M P Act—Bombay Societies Registration Act* (*VI of* 1960), *section* 86.

Sections 6 and 7 of M. P. Public Trust Act enjoin upon the Registrar to record his finding Such a finding may either be that the trust is a public trust or it is not. Section 7 (1) enjoins upon him to cause entries to be made in the register "in accordance with the findings recorded by him under section 6", and he is to publish the entries when made in the register The register prescribed no doubt is a register of public trusts. If the finding of the Registrar is that a particular trust is not a public trust, does he not have to make an entry of his finding in the register or has he to make an entry in that register only when his finding is a positive one that the trust is a public trust? It will be noticed that there is nothing in section 7 (1) to show that he is required to make an entry only if the finding is in the affirmative On the other hand sub-section (1) of section 7 expressly provides that he shall cause entries to be made in accordance with the findings recorded by him under section 6 Section 6 shows that he has to record his findings and the reasons therefor whatever the findings are, whether in the affirmative or in the negative. Since entries under section 7 (1) are to be made in accordance with such findings, either positive or negative, it follows that entries have to be made irrespective of whether the trust is found to be a public trust or not To say that he is required to make an entry of a finding only if the finding is that the trust is a public trust would be contrary to the express language of sections 6 and 7 and would unnecessarily curtail the language and the scope of the two sections This construction is also supported by section 8. Under that section, though it is the entry made under section 7 which has been given finality a right of suit is conferred on both the working trustee and all persons having interest in the trust or any property belonging to it and who is aggrieved 'by any finding.'

The High Court was, therefore, in error when it held that the Registrar was not obliged to make the entry as his finding was in the negative. In our view, reading sections 5, 6, 7 and 8 of the M.P. Act it is clear that the Registrar is enjoined upon to make an entry in the register of public trusts irrespective of whether his finding is in the affirmative or in the negative. For the entry he has to make is the entry "in accordance with his finding" whatever that finding is.

The inquiry held by the Registrar under the M P. Act was indisputably "a thing duly done" under that Act The inquiry and its result having been saved by section 86 (3) (*a*) they continue to be governed by the M P Act in spite of its ceasing to apply in Vidarbha As we have already held it was obligatory on the Registrar to have made an entry of his finding in the register of public trusts, maintained by him under that Act though the finding was that the trust was not a public trust.

That being the position, the inquiry is saved by sub-clause (*a*) of section 86 (3) and it is still pending and is governed by the M P Act In the result a fresh inquiry under the Bombay Act while the proceeding under the M.P Act is still pending was not competent and the Assistant Charity Commissioner was precluded from entertaining it.

S T Desai, Senior Advocate with *M/s. J. B. Dadachanji & Co*, Advocates, for Appellant

M—N R C

B. L. R. Aiyengar, Senior Advocate with *B. R. G. K. Achar,* Advocate, for Respondent No 1.

N. C. Chatterjee, Senior Advocate with *Shankar Anand, Asghar Ali,* and *Ganpat Rai,* for Respondents Nos. 2 to 5.

G R — *Appeal allowed.*

M. Anantanarayanan, C J. and *P. Ramakrishnan, J.* 6*th July,* 1966.

T. N. Rangaswami *v.* K K. Rangaswami. W.A No 37 of 1966.

Madras Panchayats Act (XXXV of 1958)*—Election of President of Panchayat—Member signatory to the proceedings of the meeting for election, recording casting of a lots on account of a tie—Election petition by the member on the ground of invalidity of a vote—No estoppel—Intention of voter, to be manifest from the ballot paper—Rejection in case of doubt.*

The fact that the respondent was a signatory to the proceedings of the meeting for the election of the President of the Panchayat and which ended in a tie requiring the casting of lots, would not estop him from contending in his election petition that a particular vote was invalid.

The true intention of the voter must be manifest from the ballot paper Where the choice of the voter had to be indicated by a round seal supplied, with a cross inside to be affixed against the name of the chosen candidate, and it was affixed on the line dividing the two cages, part of it on one cage of one candidate and part of it on the other cage belonging to another, the paper has to be rejected.

V. Thyagarajan, for Appellant.

N. Varadarajan, for 1st Respondent.

V.S. — *Appeal dismissed.*

P. Kunhammad Kutty, J. 18*th July,* 1966.

C. R. Neelakantan *v.* C. Bakthavatsalam. Appln No 1302 of 1966. C S No. 54 of 1966.

Civil Procedure Code (V of 1908)*, section* 92*, Order* 1*, rule* 10*—Societies Registration Act (XXI of* 1860)*—Public charities—Defendant in charge of an Annadhana Samajam—Suit against him for removal and other reliefs after obtaining sanction of Advocate-General—Application to implead Samajam, represented by the defendant as its Secretary—Samajam, a necessary party—No alteration of character of suit by the addition—No further sanction of Advocate-General necessary—Suit against the Society registered under Act XXI of* 1860 *under section* 92 *of the Code.*

The suit was laid against the defendant who was in charge of the Annadhana Samajam, for his removal on the allegations of various acts of breach of trust and for other reliefs, under section 92 of the Code after obtaining the sanction of the Advocate-General By means of this application, the plaintiff sought to implead the Samajam as a defendant, represented by the defendant.

Held, the Samajam is a charitable trust registered under the Societies Registration Act of 1860 and section 6 of the Act prescribes the mode in which suits by or against such societies have to be brought. But there is no provision in the Act which would justify the inference that a suit filed by or against a Society is not governed by section 92 of the Code.

The defendant who is already on record without any description of his capacity, as an intermeddler with the affairs of the Samajam and against whom sanction has been granted by the Advocate-General is sought to be impleaded as representing the Samajam which is sought to be added as supplemental second defendant. The Samajam would be a necessary party to the suit for an effective adjudication of the

disputes between the parties and such addition of the party does not alter the nature of the suit requiring the further sanction of the Advocate-General.

K. Srinivasa Rao, for Plaintiff.

Ganapathisubramanian, for Defendant.

V.S. ——— *Application allowed.*

P. S. Kailasam, J.
26th July, 1966.

Raju Naidu *v.*
Changam Co-operative Supervising Union, Ltd.
W P. No 152 of 1965.

Madras Co-operative Societies Act (LIII of 1961), *sections* 73 *and* 119 *and Madras Co-operative Societies Rules* (1963), *rule* 29 (5) (iii)—*Election of members of Committee—President and Secretary of the Society candidates for the election—Secretary receiving the nomination papers of another candidate in pursuance of authority—Contravention of the statutory rule framed under the Act—Capable of correction by issue of writ quashing election proceedings—Error apparent on the face of record—Existence of alternative remedy, no bar*

Rule 29 (5) (iii) of the Rules would be contravened in a case where the President and the Secretary were candidates for election and the Committee of the Society nominated the Secretary as the person to receive the nomination papers and the Secretary received the nomination papers. This would entail quashing of the election proceedings

In the absence of a specific provision, the deletion of the proviso to rule 29 (2) cannot be deemed to take along with it that part of sub-rule (5) (iii) which prohibits the President from receiving the nomination papers

Where the breach of a statutory rule is apparent on the face of the record a writ will issue in spite of the existence of an alternative remedy provided under section 73 of the Act.

The Government have framed the Madras Co-operative Societies Rules, 1963 in pursuance of the rule-making powers conferred under section 119 of the Act The rules that are contravened are statutory rules and the authorities who are entrusted with the conduct of election have a duty to conduct the election in the manner prescribed. Breach of any of the conditions laid down by the rules would be a breach of the Rules framed under the Act and would be enforceable by the High Court by issue of a writ

R. G Rajan, for Petitioner.

V. V. Raghavan, for Respondents 2 to 8.

V S. ——— *Petition allowed.*

M. Ananthanarayanan, C.J.
29th July, 1966.

G A. Rajaram *v* R Anantram.
C R P No 343 of 1965.

Civil Procedure Code (V of 1908), *Order* 1, *rule* 10—*Suit for dissolution of partnership—Karta of Hindu undivided family, one of the partners—Son of the Karta—If a proper party to the suit to be impleaded —No claims by son to any right or relief*

The Court must primarily consider whether the presence of a party would advance the total and satisfactory adjudication of the *lis* or the subject-matter of controversy. If the presence of such a party would be essential or highly desirable in the interest of justice, the Court has a wide discretion to implead such a party.

The son of the karta-partner has to safeguard the interests of the family by seeing that the father did not compromise the suit to the disadvantage of the family or in such a manner as to whittle down the family assets In this sense he is a proper party and his presence on record will not impede the suit in any way as no claim to a separate right or relief is made by the son.

The impleading of the son as a party does not mean that he can get any right adjudicated by a decree in the partnership suit, *inter se* between himself and his father.

A. Sundaram Iyer, for Petitioner.

M. R. Rajagopalachari and *A. Sundaresan*, for 1st Respondent.

K Parasurama Iyer, for Respondents 2 to 4.

V.S. *Petition allowed.*

P. S. Kailasam, J.
16th September, 1966.

M. Murali Dharan *v.*
University of Madras.
W P. No. 1845 of 1966.

University—Writ against—Whether maintainable—Breach of the laws of the University—Writ may issue—Action of the authorities as honest and reasonable men—Not liable to be questioned—Petitioner, a failed candidate—Seeking writ to quash the results and to direct valuation of marks again—Constitution of the Board of Examiners—Validity—Ordinance, Chapter 12, *Rule* 2 (*r*) (i).

It is clear from the authorities that the High Courts and the Supreme Court entertain writs against the proceedings of a University.

In writ proceedings the High Court cannot constitute itself into a Court of appeal from the authority against which the writ is sought If the University authorities had acted honestly and as reasonable and responsible men confronted with the situation with which they were faced, the Court will not issue the writ.

It would have to be considered whether there had been any breach of the laws of the University and if there had been any breach, whether the provisions thus contravened were mandatory or directory, depending on the question whether the requirement is insisted on as a protection for safeguarding the right of liberty of the person or of property, which the action might involve

The words 'shall have regard to' and 'after consideration of the recommendations' in Chapter 12, Rule 2 (*r*) (i) of the Ordinance, can only mean that the Syndicate should consider the recommendations and it would not have the effect of prohibiting the Syndicate from appointing any person who has not been recommended by the Board of Studies as Examiner

The action of the University authorities in the instant case was held to be justified.

S. Chellaswami, for Petitioner.

V. K. Thiruvenkatachari for *C. N. S. Chengalvarayan*, for Respondent.

V.S. *Petition dismissed*

[SUPREME COURT]

K N Wanchoo, J C Shah and *R S Bachawat, JJ*
2nd September, 1966.

Gomathinayagam Pillai *v*. Palaniswami Nadar.
C A. No 1043 of 1965.

Contract Act (IX of 1872), section 55—Time as the essence of the contract.

By Majority —In the present case there is no express stipulation, and the circumstances are not such as to indicate that it was the intention of the parties that time was intended to be of the essence of the contract It is true that even if time was not originally of the essence, the appellants could by notice served upon the respondent call upon him to take the conveyance within the time fixed and intimate that in default of compliance with the requisition the contract will be treated as cancelled. As observed in *Stickney* v *Keeble*, L R (1915) A C 386 where in a contract for the sale of land the time fixed for completion is not made of the essence of the contract, but the vendor has been guilty of unnecessary delay, the purchaser may serve upon the vendor a notice limiting a time at the expiration of which he will treat the contract as at an end In the present case appellants 1 and 2 have served no such notice, by their letter dated 30th July, 1959, they treated the contract as at an end If the respondent was otherwise qualified to obtain a decree for specific performance, his right could not be determined by the letter of appellants 1 and 2

But the respondent has claimed a decree for specific performance and it is for him to establish that he was, since the date of the contract, continuously ready and willing to perform his part of the contract If he fails to do so, his claim for specific performance must fail

The respondent must in a suit for specific performance of an agreement plead and prove that he was ready and willing to perform his part of the contract continuously between the date of the contract and the date of hearing of the suit On this part of the case the trial Court recorded a clear finding against the respondent that he was at no time ready and willing to perform his part of the contract The High Court did not consider the effect of this finding upon the claim of the respondent and without expressing dissent with that finding granted a decree for specific performance to the respondent

The trial Court has therefore come to the conclusion, having regard to the admission made by the respondent, his subsequent conduct and other circumstances, that the respondent was not ready and willing to take the sale deed at any time. The finding is based on *prima facie* good evidence and the inference raised by the trial Court is reasonable It would be difficult for this Court to set aside the finding without reappraisal of the evidence Counsel for the appellant has not asked us—and we think that in the circumstances he was right in so doing—to review the evidence on the record and to arrive at an independent conclusion on the plea of readiness and willingness of the respondent on the evidence, as the learned Judges of the High Court may have done if the question was raised before them The finding of the trial Court that after entering into the contract the respondent was not ready and willing to perform his part of the contract must be accepted.

H R Gokhale, Senior Advocate (*R Ganapathy Iyer*, Advocate , with him), for Appellants

A K. Sen, Senior Advocate (*R Gopalakrishnan*, Advocate, with him), for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT]

K. N. Wanchoo, J C Shah and *R S Bachawat, JJ*
5th September, 1966

State of M P *v.* Kaluram
C A. No 559 of 1964

Contract Act (IX of 1872), *sections* 140 *and* 141—*Scope*

If the creditor has lost or has parted with the security without the consent of the surety, the latter is, by the express provision contained in section 141, Contract Act, discharged to the extent of the value of the security lost or parted with

The State had a charge over the goods sold as well as the right to remain in possession till payment of the instalments. When the goods were removed by Jagatram that security was lost and to the extent of the value of the security lost the surety stood discharged In the present case the State has not produced the accounts furnished under rule 16 of Rules under the Forest Act by the contractor relating to the quantity of goods removed by Jagatram We must in the circumstances hold that the entire quantity contrated to be sold to Jagatram had been removed, and the surety is, because the State has parted with the security which it held, discharged from liability to pay the amount payable under the terms of the contract

Referring to *Wulff and Billing* v *Jay*, (1872) L R 7 Q B 756, the Court held subject to certain variations, which are not material for the matter under discussion section 141 of the Contract Act incorporates the rule of English law relating to the discharge from liability of a surety when the creditor parts with or loses the security held by him

The Forest Officers of the State of Madhya Pradesh parted with the goods, before receiving payment of the amount due by the contractor Jagatram Thereby the charge in favour of the State was seriously impaired and the statutory power to sell the goods for non-payment of the amount remaining due became, for all practical purposes, ineffective Again under the terms of the contract the Forest Authorities had the right to prevent removal of goods sold until the price was paid, that right was also lost The right conferred by section 83 of the Forest Act and under the terms of the contract to prevent removal and right to sell goods for non-payment of the price, coupled with the charge on the goods, constituted the security of the State and that security was lost because the Forest Officers permitted removal of the goods by the contractor

We therefore agree with the High Court that the surety Kaluram stood discharged from liability to pay the amount undertaken by him under the terms of the surety bond because the Forest Authorities of the State had parted with the security which they possessed for recovery of the amount due from the contractor.

B Sen, Senior Advocate (*J P Dube*, Government Advocate of Madhya Pradesh and *I N Shroff*, Advocate, with them), for Appellant.

B C Misra, Senior Advocate (*S S Shukla*, Advocate, with him), for Respondent

G R *Appeal dismissed.*

[SUPREME COURT]

V Ramaswami, V Bhargava and *Raghubar Dayal, JJ.*
6th September, 1966

K P Raghavan *v* M H Abbas
Crl.A. No 125 of 1966.

Penal Code (XLV of 1860), *section* 330—*Criminal Procedure Code (V of* 1898), *sections* 207-*A and* 209

It will thus be seen that there was nothing in the prosecution or the defence case which made the prosecution case inherently improbable, and there could be no justification for the Magistrate to hold that no Court could reasonably come to a conclusion on this material that the prosecution case had been established. It is clear that in these circumstances, what the Magistrate did was to appropriate to

himself the function of judging whether the prosecution evidence was to be believed or whether the defence evidence was to be believed in preference, and consequently the evidence of the prosecution witness who gave eye-witness account of the offence was unreliable No doubt a Magistrate enquiring into a case under section 209, Criminal Procedure Code, is not to act as a mere Post Office, and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session, but in arriving at that conclusion, it is not the function of an enquiring Magistrate to weigh the *pros* and *cons* of the prosecution and defence evidence and to discharge the accused merely because in his view the defence evidence was better than the prosecution evidence.

In the case before us, as we have already held above, there was direct evidence of prosecution witnesses to support the charge in the complaint and it could not be held that the witnesses who gave the evidence were such that there was no reasonable possibility of their being believed by any Court Consequently, it is clear that the Magistrate had committed an error in discharging the appellants, and the Sessions Judge was right in ordering commitment of the appellants to the Court of Session for trial His order was also rightly upheld by the High Court

We are only concerned with the interpretation of section 209 and we have indicated above how the jurisdiction under that section should be exercised by a Magistrate.

A S R. Chari, Senior Advocate (*Sardar Bahadur*, Advocate, with him), for Appellants.

B R L Iyengar, Senior Advocate (*A V. V. Nair*, Advocate, with him), for Respondent No 1.

V A Seyid Muhammad, Advocate-General for the State of Kerala (*M R. Krishna Pillai*, Advocate, with him), for Respondent No 2

G R. — *Appeal dismissed.*

[SUPREME COURT]

K Subba Rao, C J and *J M Shelat, J*
6th September, 1966

Sri Vedagiri Lakshminarasimha Swami Temple *v* Induru Pattabhirami Reddi.
C A No 605 of 1964.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *sections* 87, 93—*Section* 92, *Civil Procedure Code—Amending Act* (*II of* 1927), *section* 73—*Madras Act* X *of* 1946.

Chapter VII only provides for a strict supervision of the financial side of the administration of an institution The scope of the Auditor's investigation is limited. It is only an effective substitute for the trustee himself furnishing an audited account. It is concerned only with the current management of a trustee It does not even exonerate a trustee of his liability to render accounts except to a limited extent mentioned in sub-section (7) of section 74, an order of surcharge under that section against a trustee shall not bar a suit against him except in matters finally dealt with in such order. This shows by necessary implication that a suit can be filed for accounts against a trustee in other respects In any view, it has nothing to do with the management of a temple by a previous trustee It is contended that under sub-section (5) of section 74 the trustee or any other person aggrieved by such order may file a suit in the civil Court or prefer an appeal to the Government questioning the order of the Commissioner and, therefore, it is open to any member of the public to file a suit under the Act "Any person" there only refers to a person mentioned in sub-section (3) of section 74, *i.e*, a person who is guilty of misappropriation.

We therefore, hold that Chapter VII of the Act has no bearing on the question of liability of an ex-trustee to render account to the present trustee of his management. Chapter VII does not provide for determining or deciding a dispute in respect of such rendition of accounts. If so, it follows that section 93 of the Act is not a bar to the maintainability of such a suit.

P. Ram Reddy, Senior Advocate (*A. V. V. Nair*, Advocate, with him), for Appellant.

H R Gokhale, Senior Advocate (*S. P R Vital Rao, K Rajendra Chaudhury* and *K R Chaudhuri*, Advocates, with him), for Respondent

G R. ——— *Appeal allowed.*

[SUPREME COURT]

K.N Wanchoo, J.C Shah and *R S Bachawat, JJ* *6th September*, 1966

Kuppuswami Chettiar *v.* A S P A Arumugam Chettiar. C A No 521 of 1964.

Transfer of Property Act (IV of 1882), *section* 123—*Deed of release—Vitiated by misrepresentation—Whether a valid conveyance*

In the present case, the release was without any consideration. But property may be transferred without consideration Such a transfer is a gift Under section 123 of the Transfer of Property Act (IV of 1882), a gift may be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses Consequently, a registered instrument releasing the right, title and interest of the releasor without consideration may operate as a transfer by way of a gift, if the document clearly shows an intention to effect the transfer and is signed by or on behalf of the releasor and attested by at least two witnesses Exhibit B-1 stated that the releasor was the owner of the properties It showed an intention to transfer his title and its operative words sufficiently conveyed the title. The instrument, on its true construction, took effect as a gift The gift was effectively made by a registered instrument signed by the donor and attested by more than two witnesses.

Now, it cannot be disputed that a release can be usefully employed as a form of conveyance by a person having some right or interest to another having a limited estate, *e g*, by a remainderman to a tenant for life, and the release then operates as an enlargement of the limited estate. But in this case, we are not concerned with a release in favour of the holder of a limited estate Here, the deed was in favour of a person having no interest in the property and it could not take effect as an enlargement of an existing estate. It was intended to be and was a transfer of ownership A deed called a deed of release can, by using words of sufficient amplitude, transfer title to one having no title before the transfer The cases relied upon by Counsel are not authorities for the proposition that the operative words of a release deed must be ignored In *S P Chinnathambiar's case*, I L R (1954) Mad 500 : (1953) 2 M L J. 387, 391, the document could not operate as a transfer, because a transfer was hit by section 34 of the Court of Wards Act, and viewed as a renunciation of a claim, it could not vest title in the release In *Hutchi Gowder* v *Bheema Gowder*, I L R. (1959) Mad 552 : (1959) 2 M L J 324, 337, the question was whether a covenant of further assurance should be enforced by directing the defendant to execute a release deed or a deed of conveyance, and the Court held that the defendant should execute a deed of conveyance These decisions do not lay down that a deed styled a deed of release cannot, in law, transfer title to one who before the transfer had no interest in the property.

C. B Agarwala, Senior Advocate, (*T R Ramachandra*, Advocate and *O C. Mathur*, Advocate of *M/s J B. Dadachanji & Co*, with him), for Appellant

S. V. Gupte, Solicitor-General of India (*R. Ganapathy Iyer*, Advocate, with him), for Respondents.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

V. Ramaswami, V. Bhargava and *Raghubar Dayal, JJ.*
6th September, 1966.

Ram Baran Prasad *v.* Ram Mohit Hazra.
C.A. No. 609 of 1964.

Specific Relief Act (I of 1877), *sections* 23-*B*, 27-*B*—*Indian Contract Act* (*IX of* 1872), *sections* 37 *and* 40—*Whether the covenant of the pre-exemption offends the rule against perpetuities and is therefore void and not enforceable even against the original contracting parties.*

It is obvious that in these clauses the expression " parties " cannot be restricted to the original parties to the contract but must include the legal representatives and assignees of the original parties. There is hence no reason why the same expression should be given a restricted meaning in the pre-emption clause which is the subject-matter of interpretation in the present appeal. On behalf of the respondents Mr. N.C. Chatterji rightly argued that the pre-emption clause was based upon the ground of vicinage and this circumstance would also suggest that the intention of the parties was that the pre-emption clause should be binding upon the heirs and successors-in-interest and the assignees of the original parties to the contract.

We are accordingly of the opinion that the covenant for pre-emption in this case does not offend the rule against perpetuities and cannot be considered to be void in law. The view that we have expressed is borne out by the decisions of the Calcutta High Court in *Ali Hossain Miya* v. *Raj Kumar Haldar*, I.L.R. (1943) 2 Cal. 605, of the Allahabad High Court in *Aulad Ali* v. *Ali Athar*, I.L.R. (1927) 49 All. 527, and of the Madras High Court in *Chinna Munuswami Nayudu* v. *Sagalaguna Nayudu*, I.L.R. (1926) 49 Mad. 387 : 51 M.L.J. 229. Mr. Bishen Narain relied on the decision of the Calcutta High Court in *Nobin Chandra Soot* v. *Nabab Ali Sarkar*, (1901) 5 C.W.N. 343, and the Judgment of the Allahabad High Court in *Gopi Ram* v. *Jeot Ram*, I.L.R. (1923) 45 All. 478. For the reasons we have already stated we hold that the later decisions in *Ali Hossain Miya* v. *Raj Kumar Haldar*, I.L.R. (1943) 2 Cal. 605, in *Chinna Munuswami Nayudu* v. *Sagalaguna Nayudu*, I.L.R. (1926) 49 Mad. 387 : 51 M.L.J. 229, and in *Aulad Ali* v. *Ali Athar*, I.L.R. (1927) 49 All. 527, correctly state the law on the point.

Bishan Narain, Senior Advocate (*B. P. Maheshwari*, Advocate, with him), for Appellant.

N. C. Chatterjee, Senior Advocate (*Sukumar Ghose*, Advocate, with him), for Respondents Nos. 1 and 2.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

K. N. Wanchoo, J.C. Shah and *R. S. Bachawat, JJ.*
12th September, 1966.

Cherumanalil Lakshmi *v.* Mylhiyil Kunninankandy Narayani (dead).
C.A. No. 567 of 1964.

Malabar Tenancy Act, 1929 (*Madras Act*) (*XIV of* 1930), *sections* 21 *read with section* 3 (15)—*Kerala Land Reforms Act*, 1963 (*I of* 1964)—*Kanam-Kuzhikanam*—*Transfer of Property Act*, 1882.

On the question whether a transaction is a kanam-kuzhikanam or a usufructuary mortgage, the name given to it by the parties is a relevant, though not always a decisive, consideration. If the parties described the transaction to be a kanam-kuzhikanam it is a valuable indication that they intended it to be such and not a usufructuary mortgage. If the document purports to be a mortgage, section 12 of the Act allows the parties to prove that it is, in substance, a kanam-kuzhikanam or other lease. But if the document purports to be or is, on its true construction, a kanam-kuzhikanam or other lease, section 12 has no application and full effect must be given to the document according to its tenor.

Significantly, the parties did not describe the transactions to be a mortgage otti, panayam or a kyvasam panayam. Instead, they described the transactions as kanam-kuzhikanam and the amounts paid to the transferees as kanaratham. Exhibits A-1 and B-1 did not purport to be and were not transactions for securing

debts We agree with the Courts below that the transactions were kanam-kuzhi-kanam and were not as usufructuary mortgages.

H R Gokhale, Senior Advocate (*A G Pudissery*, Advocate, with him), for Appellants.

P Ram Reddy, Senior Advocate, (*K P Madhava Menon* and *A V. V. Nair*, Advocates, with him), for Respondents Nos 2 to 13.

G R ——— *Appeal dismissed.*

[SUPREME COURT.]

K N Wanchoo, J C Shah and *R S Bachawat, JJ* *13th September*, 1966

Sukh Lal *v.* The State Bank of India, Calcuta. C As Nos 582-583 of 1964.

Displaced Persons (Debt Adjustment) Act (LXX of 1951), *section* 5—*Definition of 'displaced debtor' and 'debt' under section* 2

We are unable to agree with the contention of the Bank that for a person to be a displaced debtor under the Displaced Persons (Debts Adjustments) Act (LXX of 1951), he must have before migration to India a place of residence only in the territory which later was included in Pakistan, and had no place of residence in the territory which is now India The words of the definition in section 2 (10) read with section 2 (6) are sufficiently wide to include the case of a person who had a place of residence in India as well as a place of residence in an area now forming part of Pakistan, provided that such person was displaced from that latter residence because of the setting up of the two Dominions or on account of civil disturbances or fear of such disturbances

The Tribunal apparently accepted the testimony of the witnesses who deposed that Sukh Lal had a place of residence at Harunabad The High Court disagreed with that view, for in their opinion Sukh Lal was not proved to have actually resided immediately before the partition at Harunabad But the test of actual residence before partition, applied by the High Court was, in our judgment, erroneous. On a consideration of the evidence, we are of the view that Sukh Lal has established his status as a displaced debtor and the High Court was in error in setting aside the order of the trial Court in so far as it related to Sukh Lal

In our view, therefore, the appeal of Sukh Lal must be allowed and the appeal filed by Karam Chand and Prabh Dayal must be dismissed. The order passed by the High Court will stand modified and the Court of First Instance will determine the final liability of Karam Chand and Prabh Dayal for the debt due to the Bank in accordance with the provisions of section 22 of the Displaced Persons (Debt Adjustments) Act (LXX of 1951).

There is little doubt that on account of circumstances, over which the appellants had no control, property of considerable value belonging to them had been destroyed. In the circumstances there will be no order as to costs in this Court and in the High Court till this date

A K Sen, Senior Advocate, *Miss Uma Mehta* and *S K Mehta* and *K L Mehta*, Advocates, with him), for Appellants

H L Anand and *K. Baldev Mehta*, Advocates, for Respondent No 1

G R ——— *Order accordingly.*

[SUPREME COURT]

M Hidayatullah, S M Sikri and *Raghubar Dayal, JJ* *10th October*, 1966

Mahadu Rupila Deore *v.* The State of Maharashtra. Cr A. No 269 of 1964.

Penal Code (XLV of 1860), *section* 161 *and section* 5 (2) *of the Prevention of Corruption Act (II of* 1947)—*Presumption under section* 4 (1) *of the Prevention of Corruption Act.*

Really, the whole object of laying the trap in bribery cases, is to secure an independent witness with respect to the transaction of the demand and the giving of bribe. The result of Mudaliar's agreeing to the suggestion of Shantilal is that there is no

independent evidence in corroboration of the statement of Shantilal It may be that it is not necessary for the prosecution to lead corroborative evidence in cases where a presumption under section 4 (1) of the Act arises against the accused, but in cases where the accused leads evidence to rebut the presumption, the importance of corroborative evidence cannot be gainsaid The Court has to weigh the probabilities of the case and to see whether the preponderance of the probabilities lies with the defence version or with the prosecution version irrespective of the presumption which is sought to be rebutted by the accused person When there is no evidence in corroboration of the statement of Shantilal it is difficult to say that his story is a probable story In fact his desire not to have a panch present leads to the inference that he was afraid of the panch not supporting the version he would like to put forward The advantage of this omission must go in favour of the appellant

The High Court, curiously enough, did not deal with this aspect of the matter. It simply referred to it as a peculiarity by observing, after narrating the prosecution case.

"When considering the probabilities of the case, the recovery of the money is not of significance What is of significance is in what connection the money was being paid and in that respect the statement of an independent witness would have been of value" The High Court refers to the contention on behalf of the appellant in this connection and brushes it aside by saying "This is besides the point"

Dealing so lightly with this important aspect of the case sufficiently vitiates the judgment of the High Court It is also significant that the High Court has nowhere referred to the credibility of the complainant, a witness who has made some inconsistent statements and had a few convictions to his credit

We are therefore of the view that the learned Special Judge had dealt with the matter fully and given adequate reasons for holding that the appellant's version was to be preferred to the prosecution case, and that the High Court was not justified in setting aside that view. The result is that the appeal is allowed and the order of the High Court is set aside The appellant is acquitted of the offences under section 161, Indian Penal Code and section 5 (1) (*b*) read with section 5 (2) of the Act Fine, if paid, to be refunded as the appellant is already on bail

N D Karkhanis, M/s Dadachanji & Co, Advocate, for Appellant.

O P Rana and *R N Sachthey*, Advocates, for Respondent

G R — *Appeal allowed*

Srinivasan, J — Kaliyan *v* Election Court.
1st July, 1966. — W P No 2104 of 1965.

Madras Panchayats Act (XXXV of 1958), *section* 25 (2) (c)—*Election—Interested in a subsisting contract—Elected member, member of Hindu joint family—Activity of another member of coparcenary—Applicability of disqualification—Section* 25 (2) (g)—*Arrears due to the Panchayat—Non-payment within the time after presentation of bill on demand—Necessary for disqualifying member.*

The mere fact that the petitioner is a member of the joint family along with his father cannot lead to the conclusion that he is interested in every activity of another member of the coparcenary.

The object of enacting a disqualification is that disqualification is regarded as personal and unless the disqualification is linked directly with the persons sought to be disqualified, the language of section 25 (2) (*c*), Madras Panchayats Act, cannot be interpreted in a very diffuse manner

The mere existence of the arrears due to the Panchayat does not impose the disqualification under section 25 (2) (*g*) What the section requires is that in respect of such arrears a bill or notice should have been served upon the person and the time specified for payment should have expired.

K. K. Venugopal, for Petitioner

K Gopalachari, for 2nd Respondent

Additional Government Pleader, for Respondent 6

V S —————— *Petition allowed.*

Ramakrishnan, J R Gobalakichenane *v* Saminathan
15th July, 1966 S A (Crl) No 685 of 1965 (P).

Pondicherry Administration Act (*XLIX of* 1962), *section* 10—*High Court—Power of* Cassation—*Exercise against orders of* "non-lieu" *recorded by* chambre des mises *on accusation—Conditions—Heads of charges—Finding given by* chambre des mises—Parte civile—*Not to be permitted to attack* motifs *for the decision by way of* cassation

The power which the High Court could exercise by way of *cassation* against orders of "*non-lieu*" recorded by the *chambre des mises* on accusation, are strictly limited and can be exercised only in the following cases. (1) If the Public Prosecutor has himself filed a petition for revision, (2) If the *parte civile* disputes the jurisdiction of the *chambre des mises* on accusation, (3) If the order has omitted to give a finding on a heading of charge, (4) If the order has declared that the complaint of the *partes civile* cannot be entertained and (5) Where the order of the *chambre des mises* on accustation does not fulfil the essential legal forms prescribed for making that order These conditions have obviously to be taken disjunctively

When the *chambre des mises* on accusation has given a finding on all the heads of charges, the *partes civile* cannot be permitted to attack the reasons (*motifs*) for the decision Such a method of attack against the order of the *chambre* by way of *cassation* is not permitted under the French law and jurisprudence for the purpose of obtaining relief by way of *cassation*

M S Venkatrama Iyer, V Krishnan and *P Veeraraghavan*, for Appellants

G Desappan and *R Ganesan*, for Respondent

Public Prosecutor on behalf of Pondicherry State

V S. *Appeal dismissed.*

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Ramakrishnan, J. Gojandavelu, *In re*,
19th July, 1966 S A. (Crl) No 984 of 1964. (P).

Pondicherry Administration Act (*XLIX of* 1962), *section* 10—*High Court—Powers of Court of* Cassation—*Appeal against the sentence filed by the Public Prosecutor—Guilt or innocence of the accused—Powers of the Appellate Court—Appeal to the High Court—French Penal Code, Article* 319—*Ingredients—Constitutes several limbs which could be taken disjunctively—Necessity to give a finding as to the applicability of particular ingredient—Practice.*

Under the French law there is a considerable volume of authority for supporting the view that where the Public Prosecutor has appealed before the Appellate Court against the inadequacy of the sentence, the entire judgment on which the sentence is based is before the Court and that in consequence the appellate Court could, in the course of the appeal, reduce or set aside the sentence pronounced by the trial Court. This view necessarily involves a finding that the appellate Court, in an appeal by the Public Prosecutor, against the inadequacy of the sentence, has also got the power to give a finding on the guilt or innocence of the accused.

The ingredients enunciated in Article 319 of French Penal Code constitute several limbs which could be taken disjunctively, and it is necessary for the writing of a complete and proper judgment, to give a finding as to which of these ingredients, have been found to be satisfied in a given case

K K Venugopal and *S Ramalingam*, for Appellant

Public Prosecutor, for State of Pondicherry.

V.S. —————— *Case remanded.*

[SUPREME COURT.]

K. Subba Rao, C J, and *J. M. Shelat, J.*
22nd September, 1966.

Manujendra Dutt *v.* Pusandev Prasad Roy Chowdhary.
C.A. No. 586 of 1964.

Calcutta Thaika Tenancy Act (*II of* 1949), *sections* 3 *and* 29 *and Amendment Act* (*VI of* 1953)—*Effect—Eviction of tenant under—Contract of tenancy providing for specific period of notice for terminating tenancy—If taken away by the provision of section* 3.

Transfer of Property Act (*IV of* 1882), *section* 106—*Determination of lease under by notice—If applicable to tenancies governed by Rent Control Legislation.*

Rent Control Acts—Objects and scope of—If could interfere with contractual rights or rights under general law as to notice of termination of lease—Statutory tenancy—When arises

The Calcutta Thaika Tenancy Act, 1949 like similar Rent Acts passed in different States is intended to prevent indiscriminate eviction of tenants and is intended to be a protective statute to safeguard security of possession of tenants Such special legislations therefore provide that even where a landlord has terminated the contractual tenancy by a proper notice, he can succeed in evicting his tenant only if he falls under one or more of the grounds laid down by the statute The word 'notwithstanding' in the section, on a true construction, means that even where the contractual tenancy is properly terminated, notwithstanding the landlord's right to possession under the Transfer of Property Act or the contract of lease, he cannot evict the tenant unless he satisfied any one or more of the grounds set out in the section.

Rent Acts are not ordinarily intended to interfere with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling, conferring no new rights of action but restricting the existing rights either under the contract or under the general law It is well settled that statutory tenancy normally arises when a tenant under a lease holds over The right of irremovability under the statute is thus a right which comes into existence after the expiration of the lease and until the lease is terminated or expires by efflux of time, the tenant need not seek protection under the Rent Acts. For he is protected by his lease in breach of which he cannot be evicted.

The provisions of the Rent Control Acts are in addition to those of the Transfer of Property Act and therefore before a tenant could be evicted by a landlord, he must comply with the provisions of section 106 of the Transfer of Property Act and those of the Rent Acts. A notice under section 106 of the Transfer of Property Act is essential to bring to an end the relationship of landlord and tenant and unless that relationship is validly terminated by giving a proper notice the landlord could not get the right to obtain possession of the premises by evicting the tenant.

A.I.R. 1965 S.C. 101, followed.

(1949) 1 M.L.J. 412 : held not correct law.

R.M. *Appeal allowed.*

Natesan, J.
29th July, 1966.

Ponnuswamy Reddiar *v.* Vasantha, minor by mother and next friend Kannammal.
S.A. No 1080 of 1962.

Evidence Act (*I of* 1872), *section* 114—*May presume—Women leaving lawfully wedded husband—Living with another in illicit intimacy from about ten days of her leaving husband—Birth of a child within seven months after leaving husband—Natural birth after full period of gestation—No evidence contra—Not the illegitimate child of the other man—Presumption.*

The first defendant and a woman had been living together in illicit intimacy from about ten days after she left her lawfully wedded husband A child was born within seven months after she left her husband. On the question whether the first defendant was the father of the child.

Held, there is no evidence that it is not a natural birth after the full period of gestation of about 280 days. Section 114 of the Evidence Act can be relied upon in such a case having regard to the common course of natural events and human conduct. If it is not a case of premature delivery, the coitus leading to conception should have been some two months prior to the woman joining the first defendant after leaving her husband. In the absence of a finding that the first defendant was keeping the woman as his concubine at the relevant period prior to the marriage one cannot assume that he is the father of the child.

T. V. Balakrishnan and *N. Vanchinathan*, for Appellant.

T. R. Ramachandran and *R. Sivapunyam*, for Respondent.

V.S. — *Appeal allowed.*

Kailasam, J.
10th August, 1966.

E V. Narayanaswami *v.*
T. V. Chinnathambi
W. P. No. 2984 of 1965.

Madras Panchayat Act (XXXV of 1958), *section* 25 (1)—*Elected member—Conviction and sentence for the offence of breach of trust—No expiration of period of five years—Disqualification—" Date of expiration thereof"—Date on which sentence expired.*

The petitioner was convicted for an offence under section 460, Penal Code, and sentenced to two months R I. on 10th June, 1959 and the same was confirmed in appeal on 13th July, 1959 and the revision to the High Court was dismissed on 28th July, 1960. The petitioner was elected as the President of the Panchayat in June 1959. After undergoing the sentence he was released on 3rd October, 1960 The election of the petitioner was set aside on the ground of disqualification laid down by section 25 (1) of the Panchayat Act of 1958.

Held, on the clear wording of section 25 (1) if a person was undergoing sentence, or his sentence expired within 5 years, he is disqualified.

The words ' date of expiration thereof' in section 25 (1) would mean only the date on which the sentence had expired.

V. Vedantachari for *M.S. Sethu*, for Petitioner.

N. Arunachalam, for 1st Respondent.

K. S. Bhakthavasthalam, for Additional Government Pleader

V.S. — *Petition dismissed.*

Natesan, J.
17th August, 1966.

Ramalinga Goundar *v.*
Saroja Ammal,
S.A. No. 1538 of 1962.

Guardian—De facto *guardian—Minor—Brother of minor acting as guardian in a transaction of sale—Legal guardian in existence—Solitary act of* de facto *guardian—Validity of alienation—Sale, prior to Hindu Minority and Guardianship Act of* 1956.

A *de facto* guardian is factually a guardian, distinguished from a *de jure* guardian, and who looks after the minor's interest and protects his person and property. The very concept of *de facto* guardianship implies some continuity of conduct, some acts of management of the property of the minor during a period. A guardian *ad hoc*, a person who figures as a guardian for the nonce in some isolated transaction cannot claim the powers recognized under the personal law of the Hindus in a *de facto* guardian before the Hindu Minority and Guardianship Act of 1956.

K. Sarvabhuman, for Appellant.

K. S. Desikan and *K. Raman*, for 1st Respondent.

V.S. — *Appeal allowed.*

Kailasam, J.
22nd September, 1966

M. Gopalaswamy *v.* University of Madras.
W. P No. 1915 of 1966

Constitution of India (1950), *Schedule VII, Entry No.* 66, *List I and Madras University Act* (*VII of* 1923), *section* 19 (*p*)—*First year law course—Evening course—Prescribing qualification of candidates for admission—Within the legislative power of State—Powers of Parliament—Rule of pith and substance—Degree obtained by private study in a foreign University—Action of University in disqualifying candidate—Not made an Ordinance under the Act—Right of candidate to be interviewed*

The object of the Advocates Act was to consolidate the law relating to legal practitioners and for constitution of Bar Councils It was not its object to co-ordinate higher education or to declare that the degrees granted by all the Universities in India are equal for the purpose of Post-Graduate Course in any University. The University Grants Commission Act of 1956 and the regulations made thereunder have not yet declared that the degrees of all Universities in India should be treated alike for the purpose of admission to Post-Graduate study or that a person who obtains a degree by a Course of private study in a University is entitled to admission in all other Universities.

The State law prescribing the qualifications for admission to the law course cannot be said to be invalid as impinging upon the Union field of legislation

The State and the University are entitled to prescribe that only persons having degrees recognized by the University and obtained after undergoing regular collegiate education from Universities can be considered for admission It cannot be said that the prescribing of these conditions would have such a heavy and devastating impact on Entry 66 of List I so as to wipe out or appreciably abridge the Central field Applying the pith and substance rule the University Act is mainly concernec with education including Universities. In prescribing the qualifications for admission to a Post-Graduate Course it incidentally trenches upon the power of the Union to legislate regarding co-ordination and determination of standards in institutions for higher education. Under the pith and substance rule the validity of the enactment cannot be effected.

Section 19 (*p*) of the Madras University Act empowers the Syndicate to make Ordinances regarding the admission of students to the University or prescribing examinations to be recognized as equivalent to the University examinations, and the Syndicate will, therefore, be within its powers if it lays down that the degrees of foreign Universities are not equivalent to the degrees of the Madras University for the purpose of admission to the F L class and that persons who obtain degrees by private study will not be eligible for admission But the University has not in fact made such an Ordinance yet. Therefore the petitioner has a right to be interviewed The effect of the Madras University Act of 1966 was not considered as no action has been taken by the University under that Act.

V. G Rao for *Subbaya* and *P K. Gopalraj*, for Petitioner.

C. N. S. Chengalvarayan, for Respondent 1.

Government Pleader, for Respondent 2.

V.S. ——— *Petition allowed.*

Venkatraman, J.
4th October, 1966.

Balasubramanian, *In re.*
Crl Misc. P. No 1526 of 1966.

Madras Prohibition Act (*X of* 1937), *section* 14, *Proviso—Motor Vehicle involved in transporting illicit liquor—Confiscation—Knowledge of owner of the commission or likely commission of crime.*

The proviso to section 14 of the Prohibition Act does not mean that unless the owner of the vehicle (*de jure* or *de facto*) of vehicle used for transporting illicit liquor satisfied the Court that he has exercised due care in preventing the commission of the offence, there should be an automatic confiscation.

Normally confiscation would be ordered only if there is some evidence to show that the owner had knowledge of the commission of the crime or of the fact that it was likely to be committed.

S. Mohan, for Petitioner.

K. A. Panchapakesan, for Public Prosecutor.

V.S. ——— *Ordered accordingly.*

Ramakrishnan, J.
3rd November, 1966

Sundararama Iyer *v.*
Shanmugha Rajeswara Sethupathi.
W.P. No. 495 of 1964.

Constitution of India (1950), *Article* 19 (1) (g)—*Trustees of a temple imposing restriction on purohits and guides by levying a licence fee—Validity—Scope of power—If could interfere with the freedom of the pilgrims to choose a person of their choice.*

The Trustees of the Rameswaram Devasthanam issued a circular stating that purohits and guides, taking pilgrims into the temple and the Theerthams within the temple and outside, should take out a licence, paying an annual fee and that such licence in suitable cases, may be issued freely and may be cancelled without notice by the Trustees.

Petitioners who are purohits and guides for many years, challenged the circular as interfering illegally with their rights to carry on their profession and as being discriminatory.

Held, while the Trustees would be within their rights to issue licences to persons to avoid scramble or unnecessary scenes within the temple, so that they may be given preference by pilgrims, they cannot interfere with the freedom of the pilgrims to choose any purohit of their choice or the right of any purohit to be so chosen and that the circular should be suitably altered by the Trustees and could not be sustained as issued by them.

V. Thyagarajan and *M. A. Rajagopalan*, for Petitioners.

R. Gopalaswami Iyengar, for Respondent.

R M. ——— *Ordered accordingly.*

Venkatadri, J.
8th November, 1966.

Padma Khan Singh *v.*
Jt. Sub-Registrar, Coimbatore.
W.P. No. 799 of 1963.

Registration Act (*XVI of* 1908), *sections* 60 *and* 61—*Certificate of registration and endorsement—Non-compliance with provisions of—If affects validity of registration.*

Payment of Taxes (*Transfer of Property*) *Act* (*XXII of* 1949), *sections* 2 (ii) *and* 3—*Notice issued by Income-tax Officer to the Registering Authority not to register a document—If amounts to a statutory declaration under the sub-section.*

Where a document has been registered, by the Registering Officer in the sense that all the formalities such as payment of consideration and admission of execution, etc., have ben complied with, the mere fact that the Registering Officer has not made the certificate of endorsement 'registered' as required by sections 60 and 61 of the Registration Act cannot affect the registration

A letter from the Income-tax Officer asking the Registering Officer not to register a document is not the same as a statutory declaration under section 2 (*ii*) of the Payment of Taxes (Transfer of Property) Act, 1949.

Case-law reviewed

24 M L J. 694, 6 C W N. 528, A.I.R. 1948 Oudh 223; A.I.R. 1956 M B. 236; A.I.R 1957 Pat. 545, A.I.R. 1963 Mys. 335, referred.

V. Tyagarajan and *R. Desikan*, for Petitioner.

The Assistant Government Pleader for the Registering Authority.

V. Balasubrahmanyan, for the Income-tax Department.

R.M. ——— *Petition allowed.*

[END OF VOLUME (1966) II M.L J. (N.R.C.)]